

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA, APPELLANT,

vs.

JAMES M. POWER, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

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[fol. A]

**IN THE
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

In the Matter of the Application of

MARTHA CARDONA, Petitioner

for an order pursuant to Article 78
of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Re-
spondents.

NOTICE OF MOTION

Sirs:

Please take Notice that upon the annexed Petition of Martha Cardona, verified August 6, 1963, Petitioner will move this Court at Special Term Part I thereof to be held in the County Courthouse, Foley Square, New York on August 14, 1963 at 9:30 a.m., or as soon thereafter as counsel can be heard for an order directing Respondents to register Petitioner as a duly qualified voter, or in the alternative directing Respondents to subject Petitioner to a literacy test in the Spanish language and upon her successfully passing such test to register her as a duly qualified voter, and for such other and further relief as may be deemed proper.

Yours, etc.,

Paul O'Dwyer, Attorney for Petitioner, 50 Broad
Street, New York City.

To:

The Board of Elections of the City of New York, 80 Varick Street, New York.

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of
MARTHA CARDONA, Petitioner
for an order pursuant to Article 78
of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Re-
spondents.

PETITION—Verified August 6, 1963

Petitioner herein, by her attorney Paul O'Dwyer, respectfully shows this Court:

1. I am a citizen of the United States and of the State of New York. I reside at 529 West 135th Street, Borough of Manhattan, City of New York and have so resided continuously since 1950.

2. I was born in Rincon, Commonwealth of Puerto Rico, United States of America on February 28, 1923. Both of my parents were born in Puerto Rico. I attended school at Aguada, Puerto Rico. I am married and have three children, all of whom were born in New York City. My husband is also a native born citizen of the United States.

(A)

3. Before taking up residence in New York City in 1948, I lived in Aguada, Puerto Rico where I regularly voted in gubernatorial, legislative and municipal elections, pursuant to the provisions of Chapter 4 of Title 48 of the United States Code.

4. My native language is Spanish, which language I both read and write. I do not read and write English. I am a [fol. 2] regular reader of the New York City Spanish-language daily newspapers and other periodicals, which, I am informed, provide proportionately more coverage of government and politics than do most English-language newspapers. I listen to Spanish-language radio broadcasts from New York City radio stations which similarly provide extensive treatment of local, state and national government and politics. I have a general understanding of government and politics which, I am informed is at least equal to that of the average, adult citizen, resident and voter of New York City. I am interested in my government and I want to play the proper citizen's role in the selection of those who purport to represent my interests in the elective offices which they hold.

In the school which I attended as a child, I was taught the same general subjects as are taught in New York City to my stepson, the only significant difference being that my stepson is taught in English and I was taught in Spanish. I learnt American history and government in my school just as my stepson now learns it in his school. I am informed that the text books in general use in schools on the mainland of the United States are, except for language, substantially identical to those in use in the school system of Puerto Rico.

5. On July 23, 1963 I appeared before the Respondents constituting the Board of Elections of the City of New York and made due demand upon them that I be registered and enrolled as a duly qualified voter. I there and then pre-

sented evidence of my age, U. S. citizenship and residence, as above set forth, none of which was in any way questioned or disputed. The said Board of Elections then and there required that I submit myself to a test of my literacy in English. I informed the said Board of Elections that I was [fol. 3] unable to do so and made demand that I be permitted to take a literacy test in my native language, Spanish. This, the Board of Elections refused to do and thereupon refused to register and enroll me as a voter.

6. The sole and exclusive reason advanced by the said Board of Elections for its action were and are certain requirements of Article II, section 1, of the New York State Constitution and sections 150, 168 and 201 (1) of the New York State Elections Law, which, in part provides that "after January 1, 1922, no person shall become entitled to vote . . . unless such person is also able, except for physical disability, to read and write English".

7. The provisions of law referred to are unreasonable, arbitrary, unconstitutional and void. They are manifestly not related to determining the ability of a citizen to exercise the elective franchise, neither in their purpose nor in their effect. As recent extensive United States Senate Hearings have shown (*Literacy Tests and Voter Requirements in Federal and State Elections*, Hearings before Subcommittee on Constitutional Rights of Judiciary Committee, 87th Congress, 2nd Session [1962]), the history of these provisions and provisions similar to them in the laws of other States, shows that their purpose is to exclude certain groups of citizens from taking part in elections and to reduce them to a second-class status. The terms of the provisions referred to show that, in their effect, they make irrational distinctions between citizens of differing racial background and serve not to assure qualification to vote but disqualification. Thus, under these provisions, a citizen who was entitled to vote prior to 1922, before any form of literacy test was in effect, may continue to vote, notwithstanding that he may be totally illiterate in any language.

[fol. 4] Moreover, by exempting from their requirements persons with a "physical disability", it guarantees the right to vote to persons who by reason of physical disability cannot read or write and do not even have available to them communication media, such as radio, from which they can aurally derive information in regard to government, politics and issues of election campaigns. The combination of the invalid "grandfather clause" and the exemption, infect the entire provision of law.

8. The right to vote is a basic right of all citizens of our Nation. Without that basic right no person can claim to be in possession of full and equal citizenship in a democracy or under a republican form of government. As the President's Commission on Civil Rights stated in its 1947 Report:

"The right of all qualified citizens to vote is today considered axiomatic by most Americans. To achieve universal suffrage we have carried on vigorous political crusades since the earliest days of the Republic. In theory the aim has been achieved, but in fact there are many backwaters in our political life where the right to vote is not assured to every qualified citizen. The franchise is barred to some because of race; to others by institutions or procedures which impede free access to the polls."

I pay taxes for the support of my government. I stand ready as all of my class, to serve my country in war. In the service of the army of the United States we have not been asked to take a literacy test in English—and fellow Puerto Ricans have fallen before enemy guns in three wars in which our country was in jeopardy. I am subject to the laws of my country. I sustain all of the duties and obligations of citizenship, yet I have been denied the one right of citizenship which is greater than all others: the right to join in choosing who shall govern me.

[fol. 5] 9. The United States Constitution, and Statutes guarantee to me citizenship of the State of New York. I was born an American on American soil. The language of my place of birth is Spanish. Thus, unless I am permitted to vote in New York and to take a literacy test in the language of that part of the area of the United States in which I was born, the guarantee of the United States Constitution which vests in me citizenship in any State in the Union where I reside, and grants to me "all privileges and immunities of citizens in the several States" (Art. IV, 2), is rendered meaningless and set at naught, and I and all others of my class are victims of a legal hoax. The rights of citizens of the United States must be reciprocal or discrimination necessarily results. Under the Constitution of the Commonwealth of Puerto Rico, adopted by the People of Puerto Rico on March 3, 1952 and amended and ratified by the United States Congress on July 3, 1952 (30 Stat. 1759) not only may an English-speaking New York citizen who moves to Puerto Rico vote in elections held there, notwithstanding his inability to read or write the native language of Puerto Rico, but the Constitution of Puerto Rico, guarantees that he may be elected to office notwithstanding that he is literate only in English (Art. III, §5, Art. VI, §4).

In contrast to these provisions, the cited provisions of New York law operate to automatically deprive me of my basic rights of United States citizenship upon my achieving New York citizenship: In Puerto Rico I was a duly qualified voter and as such voted in regular and special elections; by moving to New York and becoming a citizen of New [fol. 6] York, I forfeit my basic citizenship rights. It is submitted that this is inconsistent with reason and law.

The United States citizenship which my birth in Puerto Rico endowed me with, was not a limited privilege to enjoy only such of those rights of citizenship as various State governments might see fit to accord to me: it is an unqualified right of citizenship and it includes the right to live in, and automatically attain full citizenship in every

State of the Union. If by the accident of my birth in a part of our Nation in which the common language is Spanish I can be deprived of my right to vote for President, Senator, Congressman, Legislator, Mayor and Councilman in the City where I live, I am relegated to a second-class citizenship which our United States Constitution prohibits.

10. I believe that Puerto Ricans are a race apart within the meaning of the 14th and 15th Amendments to the United States Constitution. We lived together for centuries, sharing the same trials, and tribulations and the same hopes for the enjoyment of Freedom. Together in our island home we shared a common language, engaged in a common cause against oppression; bound together from divergent stock for centuries, we developed common traits, a common outlook, and a distinctive culture which is peculiarly our own. Sixty-five years of living under the American flag during which time this culture was at first discouraged, but for the past half-century fostered by the mainland government has served to make that culture grow, flower and reseed. Webster's dictionary says, "Race" is a term describing "a large body of persons who may be thought of as one unit because of common characteristics." Truly we are a race and it is as such that we are being denied the right to vote in New York, notwithstanding the provisions of the Constitution of the United States.

11. Upon the foregoing grounds alone the provisions of New York law which precludes me from exercising my right to vote solely upon the ground of my inability to read and write English, violate section 1. of the 14th Amendment and section 1. of the 15th Amendment to the Constitution of the United States and the Federal Civil Rights Acts of 1957 and 1960.

(B)

There are in addition, the following independent circumstances leading to the same result.

12. Puerto Rico was incorporated into the territory of the United States pursuant to the Treaty of Paris of 1898 (30 Stat. 1759). That treaty provided:

"The civil rights and political status of the native inhabitants (of Puerto Rico) shall be determined by Congress."

In the Jones Act of 1917 (Public Law 600) and in later statutes (e.g. Nationality Act of 1940, ch. 876, Tit. I, subch. II) Congress expressly accorded full United States citizenship to native-born Puerto Ricans. They were, in the language of the Jones Act, "declared and shall be deemed and held to be citizens of the United States". In none of those statutes has Congress in any way indicated that the "political rights" of persons born in Puerto Rico shall be dependent upon their ability to read and write English. Not only would such a condition be patently absurd and unjust, but it would violate the Treaty of Paris.

Precisely to the contrary, Congress has explicitly precluded political discrimination against Spanish-speaking, [fol. 8] native-born Puerto Ricans. This Congress did by its enactment (66 Stat. 327) of Article VI, section 4 of the Constitution of the Commonwealth of Puerto Rico, which provides:

"No person shall be deprived of the right to vote because he does not know how to read or write or does not own property."

13. The Treaty of Paris, the complex of statutes enacted pursuant thereto and the Congressionally-enacted Constitution of the Commonwealth of Puerto Rico are all, in the respects noted, at variance with the English-language literacy provisions of New York law above referred to, and those provisions of law are invalid as applied to me and to other United States citizens of Puerto Rican birth, under the United States Constitution and particularly Article VI thereof, which provides that, "all treaties made under the

authority of the United States shall be the Supreme Law of the Land". The Treaty of Paris did not envisage that we Puerto Ricans were merely to effect a change of masters.

14. The Congress-enacted Constitution of the Commonwealth of Puerto Rico (the authority for which lies in the Treaty of Paris) is both implicitly and explicitly at variance with the English-literacy test requirements of New York law above referred to.

That Constitution, approved by the President, and enacted by Congress (66 Stat. 327), closes its preamble as follows:

"We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles [fol. 9] of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere; our fervor for education; our faith in justice; our devotion to the courageous, industrious and peaceful way of life; our fidelity to individual human values above and beyond social position, racial differences and economic interests; and our hope for a better world based on these principles."

15. The foregoing provisions of the Constitution of the Commonwealth of Puerto Rico, as adopted by the United States Congress constitute the observance by Congress of the obligations cast upon it by the Treaty of Paris, under which Congress and Congress alone has power and authority to determine the political rights of American citizens of Puerto Rican birth. Recognizing that ours is not a single-culture Nation but a fusion of several cultures, principally English and Spanish, Congress has declared that both Spanish and English are the recognized tongues of our country and our hemisphere. This it has done, not only by providing that public elective office under the

Puerto Rico Constitution which it enacted shall be open to those of either language, but it has gone further and expressly prohibited the application of literacy tests to citizens born in Puerto Rico, as a qualification for voting. Congress has recognized that the full citizenship status of Puerto Rican born Americans would not be attained if the exercise of those rights were dependent upon a reading and writing knowledge of a language which, to the Puerto Rican is foreign.

Upon these grounds, too, the provision of New York law which preclude me from exercising my citizen's right to vote [fol. 10] solely upon the ground of my inability to read and write English are void as violative of Article IV, §§2, and 4; Article VI, Amendments V, XIV and XV of the United States Constitution.

(C)

16. In 1953 the government of the United States formally committed itself to the United Nations to accord to its citizens of Puerto Rican birth full and complete political rights. This, the United States Government did as part of an elaborate presentation, the purpose of which was to exempt itself from submitting annual reports to the Secretary General of the United Nations upon Puerto Rico as colonial territory of the United States, pursuant to Article 73(e) of the United Nations Charter. (*U. S. Participation in the U. N.*, Report by the President to the Congress for the year 1953, pp. 181, et seq.). Upon the basis of this commitment, the General Assembly of the United Nations adopted a Resolution declaring that Chapter XI of the United Nations Charter is inapplicable to Puerto Rico (*id.*).

Addressing itself specially to the political rights accorded to the people of Puerto Rico, the "*Memorandum By the Government of the United States, etc.*" submitted to the United Nations on March 21, 1953, stated that the people of Puerto Rico have had:

" . . . universal adult suffrage since 1929. There have been no property requirements since 1906 and the last literacy requirements were removed in 1935."

It further noted that full and complete United States citizenship has been enjoyed by the Puerto Rican people [fol. 11] since 1917, and that, "the Constitution of the Commonwealth (of Puerto Rico) is similar to that of a State of the Federal Union". It further assured the General Assembly:

"The people of Puerto Rico continue to be citizens of the United States as well as Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable to Puerto Rico . . . The People of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage, in free and periodic elections in which differing political parties offer candidates, and which are assured freedom from undemocratic practices by the Constitution itself."

17. The commitment made formally by the Government of the United States to the General Assembly of the United Nations constitutes, under the United Nations Charter which was duly ratified by the President of the United States, by and with the advice and consent of the Senate of the United States on August 8, 1945, was an exercise of the treaty and foreign relations powers of the Government of the United States pursuant to Article VI of the Constitution of the United States and the United States Participation Act (22 US C., Sections 287, *et seq.*), and as such, binds the United States and each State of the Union. The imposition upon United States citizens of Puerto Rican birth of the intolerable and unreasonable condition that in order to exercise their political rights as citizens and under the commitment aforementioned, they must learn a language which to them is foreign, directly violates that com-

[fol. 12] mitment, in contravention of Article VI of the United States Constitution, the United Nations Participation Act, the Charter of the United Nations, and the formal commitment referred to. Consequently, for this reason too, the application to me of the provisions of New York law referred to, the denial by respondents of my application to register for voting upon the sole ground of my inability to read and write English and their denial of my demand that I be permitted to take a voter's literacy test in my own language, Spanish, are all acts in violation of Article VI of the Constitution of the United States, the United Nations Participation Act, the Charter of the United Nations and the formal commitments of the Government of the United States hereinabove referred to.

Wherefore, your Petitioner demands that an order be made herein directing the Respondents herein to register Petitioner as a duly qualified voter, or in the alternative directing the Respondents herein to subject Petitioner to a literacy test in the Spanish language and upon her successfully passing such test to register her as a duly qualified voter, and for such other relief as may be deemed proper.

Paul O'Dwyer, Attorney for Petitioner, 50 Broad Street, New York 4, N. Y.

[fol. 13] *Duly sworn to by Martha Cardona, jurat omitted in printing.*

[fol. 13a]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of
MARTHA CARDONA, Petitioner,
for an order pursuant to Article 78 of the
Civil Practice Act,
—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Respon-
dents.

ANSWER OF JAMES M. POWER, ET AL—August 27, 1963

The respondents, James M. Power, et al, for their answer
allege:

First: Deny any knowledge or information thereof suffi-
cient to form a belief as to each and every allegation con-
tained in paragraphs of the petition numbered "1", "2",
"3", "4", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16"
and "17".

The Material and Pertinent Facts Herein Are:

Second: Executive Law §71 provides that whenever the
constitutionality of a statute is brought into question in
any proceeding, the Court may make an order permitting
the Attorney General of the State of New York to appear
in support of the constitutionality of such statute. When
such an order has been made, it shall be the duty of the
Attorney General to appear in such proceeding in support
of the constitutionality of such statute.

Third: On the 14th day of August, 1963, this Court granted the Attorney General's application, made pursuant to Executive Law §71, to appear in this proceeding.

[fol. 13b] Fourth: Respondents respectfully refer this Court to the Attorney General for any defense of the constitutionality of the statute involved herein.

Wherefore, respondents respectfully pray that an order be issued herein.

Yours, etc.

Leo A. Larkin, Corporation Counsel, Attorney for
Respondent, James M. Power, Office and P.O. Ad-
dress, Municipal Building, Borough of Manhattan,
City of New York.

Dated: August 27, 1963.

To:

Paul O'Dwyer, Esq., Attorney for Petitioner, 50 Broad
Street, New York City.

Louis J. Lefkowitz, Esq., Attorney General, Attorney
for Pro Se, 80 Centre Street, New York 13, N. Y.

[fol. 13c] *Duly sworn to by James M. Power, jurat omitted
in printing.*

[fol. 14]

At a Special Term of the Supreme Court,
Part I thereof, held in and for the County
of New York, at the County Court House,
Foley Square, Borough of Manhattan,
City and State of New York, on the 3rd
day of September, 1963.

Present: Hon. Frederick Backer, Justice.

In the Matter of the Application of
MARTHA CARDONA, Petitioner,
for an order pursuant to Article 78 of the
Civil Practice Act,
—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Respon-
dents.

ORDER PERMITTING ATTORNEY GENERAL OF NEW YORK TO
INTERVENE—September 3, 1963

A motion having been made orally by the Attorney Gen-
eral of the State of New York, for an order permitting him
to appear in this proceeding pursuant to Executive Law,
§71;

Now, after hearing Louis J. Lefkowitz, Attorney General
of the State of New York, by George C. Mantzoros, As-
sistant Attorney General, in support of the motion, and
upon the consents given in court by Paul O'Dwyer, Esq.,
W. Bernard Richland, Esq., of counsel; and by Leo Larkin,
Esq., Corporation Counsel of the City of New York, Arthur
Geisler, Esq., Assistant Corporation Counsel, of counsel;
and due deliberation having been had thereon, it is

[fol. 15] Ordered that the said motion be and the same is hereby granted and the Attorney General of the State of New York be and he is hereby permitted to appear in this proceeding as intervenor pursuant to Executive Law, §71.

Enter

FB, J. S. C.

[fol. 16]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 12434/63

In the Matter of the Application of
MARTHA CARDONA, Petitioner,
for an order pursuant to Article 78 of the
Civil Practice Act,
—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROUREE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Respon-
dents,

—and—

LOUIS J. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of the Executive Law.

ANSWER OF ATTORNEY GENERAL—February 28, 1964

Louis J. Lefkowitz, Attorney General of the State of New York, appearing pursuant to Executive Law, Sec. 71 answering the petition, alleges:

First: Denies any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in paragraphs of the petition desig-

nated "1", "2", "3", "4", "5", "6", "8", "9", "10", "11", "12", "13", "14", "15", "16", and "17".

Second: Denies the allegation contained in paragraph "7" of the petition that the provisions of law referred to are unreasonable, arbitrary, unconstitutional and void and denies any knowledge or information thereof sufficient to form a belief as to the truth of each and every other allegation contained in paragraph "7" of the petition.

[fol. 17]

Objections in Point of Law With Affidavit

Third: That it affirmatively appears from the petition herein that it does not state facts sufficient to entitle the petitioner to the relief prayed for or any part thereof or to any other relief.

Fourth: The identical issue here raised, to-wit, the constitutionality of Article II, Sec. 1, of the Constitution of the State of New York and Election Law, Sections 150, 168, 201(1), implementing the same, has been adjudicated in recent successive proceedings and declared constitutional (*Camacho v. John Doe*, 21 Misc. 2d 692, 221 N.Y.S. 2d 262, aff'd., 7 N.Y. 2d 762 [1959]; and *Camacho v. Rogers*, 199 F. Supp. 155 [S.D.N.Y. 1961; three judge court]), which bars its relitigation in this proceeding under the doctrine of *res judicata*. See also, *Lassiter v. Northampton Co. Board of Elections*, 360 U. S. 45 (1959), sustaining the constitutionality of the North Carolina Constitution requiring that a prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language."

Fifth: The acts of the Respondents alleged in the petition herein and at the times therein mentioned, if done, were performed within the scope of their powers, duties and jurisdiction pursuant to the Constitution of the State of New York, Art. II, Sec. 1, and Election Law, Sections 150, 168, 201(1), since the provisions thereof mandated the Re-

spondents in the exercise of their official duties to refuse to register petitioner after Respondents requested petitioner to submit to a test of literacy in English and petitioner "informed the said Board that [she] was unable to do so".

[fol. 18] Wherefore, the Attorney General respectfully requests that the petition herein be dismissed.

Dated: New York, N. Y.
February 28, 1964.

Louis J. Lefkowitz, Attorney General of the State of New York, Attorney *pro se*, appearing pursuant to Executive Law, Sec. 71, 80 Centre Street, New York, N. Y. 10013.

To:

Paul O'Dwyer, Esq., Attorney for Petitioner, 50 Broad Street, New York, N. Y.

Hon. Leo A. Larkin, Corporation Counsel, Attorney for Respondents, Municipal Building, New York, New York.

[fol. 19] *Duly sworn to by George C. Mantzoros, jurat omitted in printing.*

[fol. 20]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 12434/63

In the Matter of the Application of
MARTHA CARDONA, Petitioner,
for an order pursuant to Article 78 of the
Civil Practice Act,
—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Respon-
dents,

—and—

LOUIS J. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of the Executive Law.

AFFIDAVIT OF GEORGE C. MANTZOROS—
Sworn to February 28, 1964

George C. Mantzoros, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, appearing herein pursuant to Executive Law, Sec. 71, and the order of this Court (Backer, J.) made and entered on September 3, 1963, in support of the constitutionality of Article II, Sec. 1, of the Constitution of the State of New York and Election Law, Sections 150, 168, 201(1).

2. Heretofore, a motion to dismiss the petition for failure to contain a plain and concise statement was denied by this Court (N.Y.L.J. Nov. 20, 1963, p. 14) (Postel, J.) and leave to appeal was denied by this Court (N.Y.L.J. Dec. 11, 1963,

p. 14) (Postel, J.) and by the Appellate Division (Valente, J.).

[fol. 21] 3. Petitioner seeks an order directing the Board of Elections to register petitioner as a duly qualified voter or to give her a literacy test in the Spanish language. The nub of the petition is contained in paragraph 5 where it is alleged:

" * * * I informed the said Board of Elections that I was unable to do so and made demand that I be permitted to take a literacy test in my native language, Spanish."

4. There is an "identity of issue" between this proceeding and the prior proceedings of *Camacho v. John Doe*, 31 Misc. 2d 692, 7 N. Y. 2d 762 [Nov. 19, 1959] and *Camacho v. Rogers*, 199 F. Supp. 155 [S.D.N.Y. 1961] [three judge court]. In these prior proceedings the constitutionality of Article II, Sec. 1, of the New York Constitution and the implementing provisions contained in the Election Law was sustained. Furthermore, the issue of the constitutionality of English literacy tests has been adjudicated by the Supreme Court of the United States in *Lassiter v. Northampton Co. Board of Elections*, 360 U. S. 45 (June 8, 1959). In *Lassiter* the Supreme Court sustained the constitutionality of a provision of the North Carolina Constitution requiring that a prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language". The *Lassiter* decision was cited in the prior proceedings by the Attorney General of the State of New York and the Corporation Counsel of the City of New York (*Camacho v. John Doe*, [Record on Appeal]; *Camacho v. Rogers*, *supra*, and by the Attorney General of the United States (*Camacho v. Rogers*, *supra* [amicus brief]). Consequently, the Attorney General in his Answer to the Petition at bar asserts as one of the objections in point of law, that this proceeding to relitigate the identical issue for a third [fol. 22] successive time, is barred by the doctrine of *res judicata*.

5. Petitioner, Camacho, in the prior proceedings, like petitioner herein, alleged he was born in Puerto Rico and that he was "not literate in the English language" (*Camacho v. John Doe, supra*, pet. par. 1) (Ex. A) and spoke of all similarly situated persons when he referred to "the right to vote for Spanish speaking United States citizens" (*Camacho v. Rogers, supra*, complaint, par. 8) (Ex. B). Petitioner herein likewise refers to "all of my class" (par. 8). Moreover, petitioner herein is represented by Paul O'Dwyer, Esq., who also appeared, of counsel, in *Camacho v. Rogers, supra*, 199 F. Supp. 155. Since there was adequate representation in the successive adjudications of the identical issue in the prior proceedings, the decisions of the New York Court of Appeals and the three Judge Federal Court as well as the Supreme Court of the United States, are binding on all similarly situated persons and the public at large.

6. The identity of issue between the proceeding at bar and *Camacho v. John Doe* and *Camacho v. Rogers, supra*, is further illustrated by the similarity in the nature of the relief sought and the constitutional objections. For example, the petition in *Camacho v. John Doe, supra*, cited the Treaty of Paris of 1898, the Fourteenth and Fifteenth Amendments to the U. S. Constitution, and the Civil Rights Act of 1957. In *Camacho v. Rogers* the complaint also asserted alleged rights under Article VI of the U. S. Constitution and the Civil Rights Act of 1960. The brief (Point II) in the federal court discussed the Fourteenth Amendment and cited *Guinn v. United States*, 238 U. S. 347 and [fol. 23] *Ex parte Yarborough*, 110 U. S. 651 which are cited in the brief in the proceeding at bar (p. 9). The petition at bar similarly re-alleges the Fourteenth and Fifteenth Amendments of the U. S. Constitution (par. 15), the Treaty of Paris (par. 12), Article VI of the U. S. Constitution (par. 17), and the Civil Rights Acts of 1957 and 1960. It also alleges that the literacy test provision is invalid because it contains two exemptions, to wit: (1) citizens entitled to vote prior to 1922 and (2) physical disability, in

support of which the brief (p. 9) cites the *Guinn* and *Yarborough* cases.

7. In any event, the contentions here that the exemption of citizens entitled to vote prior to 1922 from the literacy test requirement constitutes a "grandfather clause" and that this exemption plus the physical disability exemption "infect the entire provision of law" (par. 5), are frivolous. The exemption of citizens entitled to vote prior to 1922 is not a "grandfather clause" for it in no way exempts their descendants from the literacy test qualification. Furthermore, this exemption has no similarity to the constitutional provision condemned in *Guinn v. United States*, 238 U. S. 347, which provision established an exemption to persons entitled to vote prior to January 1, 1866, continuing conditions existing before the adoption of the Fifteenth Amendment and the continuance of which conditions the amendment prohibited. Hence, the *Guinn* case has no relevancy in the proceeding at bar. Article II, Sec. 1 of the New York Constitution does not violate the United States Constitution for it is perfectly clear, and it has been repeatedly so held, that the right to vote was not "denied or abridged * * * on account of race, color or previous condition of servitude" (Fifteenth Amendment) by the provision in question.

[fol. 24] The *Guinn* case and *Yick Wo v. Hopkins*, 118 U. S. 356, cited in petitioner's brief (p. 9) were also cited in the federal action in the amicus brief of the Civil Liberties Union (p. 1-C). The amicus brief of the American Jewish Congress in the Court of Appeals in *Camacho v. John Doe*, cited the *Guinn* case and *Ex parte Yarborough*, cited by petitioner (p. 9).

8. The State of New York literacy test and its administration has been recently described as "model" and "most exemplary". See 31 Notre Dame Lawyer, pp. 257-258 (1956) where the author observed:

"The most exemplary use of the literacy test has been made in New York, where definite, objective standards

have been established. In 1943, twelve tests, prepared by the state department of education and administered by the board of regents, were given to all applicants for registration throughout the state. These tests were designed for a sixth grade level of reading, each test consisted of an eight to ten line composition on topics of civics, history, geography, natural science or biography. Following this composition were eight questions based on the composition which could be easily answered if the applicant could understand what he had read. In 1945, only 9.21 percent of those who took the test failed it, and this in a state with an extremely large alien population."

9. Pursuant to the declaration of the United States Supreme Court that "the interest of the state requires that there be an end to litigation" (*Reed v. Allen*, 286 U. S. 191, 198), the public interest requires the dismissal of the third successive challenge to the constitutionality of Article II, Sec. 1, of the New York Constitution and the Election Law implementing the same.

[fol. 25] Wherefore, it is respectfully requested that this proceeding be dismissed in all respects.

George C. Mantzoros

Sworn to before me this 28th day of February, 1964,
Barry J. Lipson, Assistant Attorney General.

[fol. 26]

EXHIBIT A TO AFFIDAVIT

SUPREME COURT

BRONX COUNTY

In the Matter of the Application of

JOSE CAMACHO,

Petitioner,

—against—

JOHN DOE, RICHARD ROE, JOHN STYLES, and JOHN BROWN, whose true names are unknown, said names being fictitious, the persons intended being the Inspectors of Election in and for the 26 Election District of the 6 Assembly District of the County of Bronx, and constituting the Board of Inspectors of Election of said Election District,

Respondents.

The petition of JOSE CAMACHO respectfully shows to this Court:

1. I am a citizen of the United States and over the age of 21 years, I have been an inhabitant of the State of New York for upwards of one year next preceeding this election, a resident of the City of New York for the last four months, and a resident of the 26 Election Election District, in the 6 Assembly District in Bronx County for the last thirty days. My place of residence is 1145 Fox Street, which is in said election district. In the past I would have been refused registration for the election because I am not literate in the English Language.

2. I am a citizen of the United States by birth in Puerto Rico.

3. That I am literate in the Spanish Language because I am a descendant of former subjects, who has elected the

Spanish Language, residing in the Commonwealth of [fol. 27] Puerto Rico, and pursuant to a treaty between the United States and Spain executed in 1898, and certain subsequent laws ratified by the Congress of the United States establishing the Spanish Language or the English Language as the languages of the Commonwealth of Puerto Rico, as well as the citizenship of Puerto Ricans of the United States.

4. That your petitioner claims that he is being denied the equal protection of the laws of the State of New York in that I am unable to vote because of my inability to read and write the English language, which is attributable to the fact that my racial ancestry is Spanish, and that the Congress of the United States ratified laws establishing Spanish as a language of Puerto Ricans and likewise made Puerto Ricans citizens.

5. That the 15th Amendment of the Constitution says that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, again I say that I speak and am literate in Spanish because of my Spanish racial ancestry.

6. I believe that to require a literacy test in any language shall be proper only provided that the State of New York shall comply with Section 2 of the 14th Amendment of the Constitution of the United States by reducing the number of representatives to Congress when the right to vote is denied to U.S. citizens for any reason except participation in rebellion or other crime in the proportion which the number of such citizens shall bear to the whole number of citizens over 21 years of age.

7. Petitioner respectfully submits that to require him to be literate in English as a condition to the right to vote is to establish a norm of citizenship in addition to that established by the Congress of the United States, and that the State of New York has no authority to vary the definition of U.S. citizenship in any manner.

[fol. 28] 8. That petitioner by his disfranchisement shall thereby be denied representation in the government even though no provision is made to relieve him from taxation.

9. Unless an order is granted and my right to register and vote determined I shall be deprived of my vote in the coming election.

10. No previous application for this or a similar order has been made to any Court or Judge by me.

WHEREFORE, I pray that an order be granted by this Court returnable forthwith, requiring the said Board of Inspectors of Election of Said Election District to comply with my demand to allow me to take a literacy test in Spanish, to register, to sign the registration Book and to cast my vote on Election day as an elector of said Election district, or to appear before this Court and show cause why an order should not issue out of this Court commanding them to allow me to take a literacy test in the Spanish Language as prescribed by Section 166 of the Election Law for the English Language, to register and to vote on election day, and cast my vote as an elector of said Election District.

Jose Camacho
Petitioner

STATE OF NEW YORK
COUNTY OF BRONX

JOSE CAMACHO, being duly sworn, deposes and says that is the petitioner named in the foregoing petition; that the said foregoing petition has been translated to him in the Spanish Language, and as so translated he knows the contents thereof; that the same is true to his own knowledge, except as to the matter therein stated to be alleged on in-[fol. 29] formation and belief, and that as to those matters he believes it to be true.

Jose Camacho
Petitioner

Sworn to before me this
4th day of October, 1958

FRANK C. TERMINI
Notary Public, State of New York
No. 24-9304700
Qualified in Kings County
Commission Expires March 30, 1960

[fol. 30]

EXHIBIT B TO AFFIDAVIT**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In the Matter of the Application of**JOSE CAMACHO,****Petitioner,****—against—****WILLIAM T. ROGERS, Attorney General of the United States,
NELSON ROCKEFELLER, Governor of the State of New
York, LOUIS LEFKOWITZ, Attorney General of the State
of New York, and the BOARD OF ELECTIONS OF THE CITY
OF NEW YORK,****Respondents.**

TO THE UNITED STATES DISTRICT COURT:

The petition of JOSE CAMACHO respectfully shows to this Court:

1. That I am a citizen of the United States, and over the age of 21 years. I was born in Puerto Rico, and during my residence in Puerto Rico, and since my 21st birthday I was at all times a qualified voter, and I at all times exercised my right to vote in Puerto Rico.

2. I have been an inhabitant of the State of New York for upwards of one year preceding the next election, a resident of the City of New York for the last 4 months, and a resident of the 26th Election District, in the 6th Assembly District, Bronx County for the last thirty days. My residence has in fact been at all times herein mentioned at 1145 Fox Street, Bronx, New York City, New York.

3. That since I have been a resident of the State of New York, I have at all times desired to exercise my right to vote

in the political elections of this State and its subdivisions, however, I have been denied the right to vote because I am not literate in the English language. I am literate in the Spanish language.

4. I am literate in the Spanish language because it is one of the two native languages, the other being English. In Puerto Rico Spanish is the language of the greatest use [fol. 31] because Puerto Rico is a former Spanish colony in the same manner that about 36 of the United States were likewise Spanish colonies and which said territories became a part of the United States as the result of a treaty. The treaty involving the Territory of Puerto Rico was signed December 10th, 1898, and according to said treaty the civil rights and political status of the native inhabitants are to be determined by the Congress. In the implementation of the Treaty Congress provided that either the English or Spanish language could be used, and likewise by law made natives of Puerto Rico citizens of the United States. In Puerto Rico citizens of the United States literate only in English suffer no loss of the right to vote or other civil disability.

5. Your petitioner states that he is being denied the right to vote because of his race, as a Puerto Rican of Spanish ancestry. That as a result he is being denied the equal protection of the law guaranteed to him by the 14th Amendment of the United States Constitution. That the Board of Elections of the City of New York is violating the Civil Rights Act of 1957 as amended by establishing a practice or pattern in the deprivation of the right to vote to United States Citizens. The Civil Rights Commission has investigated this pattern or practice and has found as a fact that Puerto Ricans are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York.

6. Petitioner states that the major political parties devote special efforts to get the Spanish speaking minorities to vote for them, and much campaigning is done in the

Spanish language in the press, radio and television, and many promises are made in the Spanish language and we are deceived in the Spanish language, because the literacy test in the English language is not adequate proof that one who is able to pass it really knows the English language. This is merely another manifestation of the denial of the equal protection of the law practiced on the Spanish speaking Puerto Ricans.

7. That the respondent, NELSON ROCKEFELLER, as an ex-[fol. 32] ecutive officer of the State of New York is not supporting the Constitution of the United States as required by Article VI of the United States Constitution in that the English Language literacy voting requirement is contrary to the 14th Amendment in that it denies the equal protection of law to Spanish language oriented Puerto Rican United States citizens; in that it denies or abridges the right to vote to United States citizens over 21 years of age to persons who have not participated in rebellion or other crime. The VI Amendment of the United States Constitution is further violated in that the right established under the treaty with Spain to have Congress determine the civil rights of Puerto Rican United States citizens is interefered with.

The most grievous interference caused by respondents' refusal to support the Constitution and laws of the United States are those acts which result in a violation of the United Nations Charter and the Universal Declaration of Human Rights. The United Nations Charter is a Treaty obligation of the United States and every political subdivision thereof. The respondents are pledged by the United States Government at Article 55 to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, and Article 21 of the Declaration of Human Rights establishes the right to vote as a basic human right.

8. The right to vote for Spanish speaking United States citizens is of very momentous importance due to the prevail-

ing assaults being made by communist elements on the Spanish speaking republics of our hemisphere who are also members of the United Nations. That discrimination or denial of the equal protection of the law to Spanish speaking United States citizens will expose our great nation to similar assaults, and perhaps even sanctions to expulsion from the United Nations Organization.

9. That the right to vote is the only means that United States citizens have to express their will in the operation of their government. The Spanish speaking United States citizens are particularly desirous of the right to vote in the light of certain legislative and administrative projects [fol. 33] which will affect Spanish speaking United States citizens in a very direct manner. Spanish speaking United States citizens are especial apprehensive of proposed legislation which will suspend or exempt certain persons, firms or corporations from the execution of the anti-trust laws when engaged in foreign commerce. Spanish speaking United States citizens are sensitive to this, aside from the fact that the United States Treasury may possibly be deprived of millions of dollars of lawful revenue, and may result in the discontinuance of many pending anti-trust matter, but we want to save the United States from the cynical comments and criticisms which result from any such law. The fact that the Latin Americans would be treated with the same disdain and denial of equality as the United States treats its own Spanish speaking citizens, because they too speak the Spanish language, is already in evidence.

10. That the English language literacy requirement for the exercise of the right to vote is merely a remaining burden wished upon our society by an obsolete Anglo-Saxon racist conspiracy fanned into new life by a Join Legislative Investigation on Seditious Activities and Report on Revolutionary Radicalism of the New York Senate of 1920. The allegation of this panic begotten document confused the foreign language with anarchy, revolution and subversion, and English with patriotism and loyalty. Our experi-

ence with the Spanish speaking United States citizens has taught us that they are loyal citizens on the battlefields as well as in the home and factories of our great nation. The United Nations Charter and the Declaration of Human Rights have impliedly repealed the English language limitation, as well as the Civil Rights Act as amended.

11. That the respondent, WILLIAM T. ROGERS, Attorney General of the United States has been apprised of the pattern or practice of the State of New York to deny the right to vote to citizens of the United States because of their race, namely Puerto Rican Citizens through the device of an English language literacy test. He cites the *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 as being the law and makes no distinction of facts between [fol. 34] the present matter and the stated authority. That said respondent is in error and is not responding to the indications of the Civil Rights Act of 1957 as amended. That the *Lassiter* case recognized that the literacy test could be used for illegal or improper motives of exclusion from the right to United States citizens otherwise qualified to vote. That subsequent to, and for the express purpose to remedy the situation protected by the *Lassiter* case the Civil Rights Act of 1957 as amended provided that where a deprivation of the right to vote was the result of a pattern or practice the Attorney General shall take further action to grant the necessary relief to allow the deprived citizen an opportunity to vote. The statute uses the word "may" indicating discretion of the Attorney General. Petitioner states that there has been a finding of fact resulting from an investigation of the said pattern or practice by the United States Civil Rights Commission, that Puerto Rican American Citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York. Hence the Attorney General's discretion must now respond to the finding of fact, as this was the obvious intention of Congress in passing said legislation.

12. That the respondent WILLIAM T. ROGERS, Attorney General of the United States fails to support the Constitution of the United States as required by Article VI of said Constitution, in that he has not acted in accordance with the obligations of the United States Government to the United Nations Organization pursuant to its pledge at Article 56 of the United Nations Charter, to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race sex, language, or religion, as well as the requirement of Article 21 of the Declaration of Human Rights which establishes the right to vote as a basic human right of all members of the United Nations Organization. That the provision of the Treaty of Paris of December 10th, 1898 reserving to Congress the right to determine the civil rights and political status of Puerto Ricans.

[fol. 35] 13. That the Board of Elections of the City of New York, as respondent herein fails to support the Constitution of the United States and Laws and Treaties made in pursuance of said United States Constitution as hereinbefore mentioned.

14. That petitioner has made no previous application for the relief demanded herein.

15. That petitioner shall be irreparably damaged if the relief sought herein is not granted prior to the next general election.

WHEREFORE, it is respectfully requested that the respondent WILLIAM T. ROGERS, Attorney General of the United States be ordered to take such action as required pursuant to the Civil Rights Act of 1957, as amended, and cause an order to be issued to the respondent Board of Elections of the City of New York or its Officers to allow the petitioner, JOSE CAMACHO, to register and in all ways to be qualified to vote in the next election; and that the said WILLIAM T. ROGERS, Attorney General of the United States be restrained from interfering with the enforcement of the

hereinstated provisions of the Constitution of the United States, and the laws and treaties in pursuance thereof; that the respondents NELSON ROCKEFELLER, Governor of the State of New York, and LOUIS LEFKOWITZ, Attorney General of the State of New York be enjoined from enforcing the English language literacy requirement of the Election Law of the State of New York because it is contrary to the Constitution of the United States and laws and treaties in pursuance thereof; that the respondent BOARD OF ELECTIONS OF THE CITY OF NEW YORK be required to take all necessary steps to allow the petitioner to register and vote in the next election in the City and State of New York, and if literacy be required said Board of Elections of the City of New York shall take the proof of such literacy from the petitioner in the Spanish Language, and for such other and further relief as may be just herein.

/s/ JOSE CAMACHO
Petitioner

[fol. 36]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOSE CAMACHO, being duly sworn, deposes and says:

That he is the petitioner in the within action, that he has had read and knows the contents of the foregoing petition, and that the same is true to his knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

/s/ JOSE CAMACHO
JOSE CAMACHO

Sworn to before me this
8th day of September, 1960

FRANK C. TERMINI
Notary Public, State of New York
No. 24-9304700
Qualified in Kings County
Commission Expires March 30, 1958

[fol. 37]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 12434/63

In the Matter of the Application of
MARTHA CARDONA, Petitioner,
for an order pursuant to Article 78
of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN B. CREWS, Members of and constituting the
Board of Elections of the City of New York, Respon-
dents,

—and—

LOUIS J. LEFKOWITZ, As Attorney General, appearing spe-
cially pursuant to Section 71 of the Executive Law.

SUPPLEMENTAL AFFIDAVIT OF GEORGE C. MANTZOROS—
Filed March 13, 1964

State of New York,
County of New York, ss.:

George C. Mantzoros, being duly sworn, deposes and
says:

1. I am an Assistant Attorney General in the office of
Louis J. Lefkowitz, Attorney General of the State of New
York, appearing herein pursuant to Executive Law, Section
71. This supplemental affidavit is submitted pursuant to
leave of this Court.

2. Relitigation of the issue of the constitutionality of
the literacy in English qualification contained in Article II,
Section 1 of the New York Constitution which is barred by

the doctrine of *res judicata* is here sought on the grounds of frivolous contentions of alleged newly-found classifications which, it is claimed, are discriminatory, and by the extension of arguments previously advanced by persons [fol. 38] similarly situated and rejected by the federal and state courts.

3. The contention that Article II, Section 1 of the New York Constitution exempts from the literacy in English qualification persons physically disabled which, it is claimed, constitutes a discriminatory classification, is a fallacy. In the first place, even if this were so, this would be a reasonable classification. Actually, it is not even accurate. Physical disability is not an exception to the literacy qualification as evidenced both by the syntax of Article II, Section 1, and the implementing provisions of the Election Law. A new voter, including a person physically disabled, may present as evidence of literacy, a certificate or diploma (Election Law, Section 168[2]). The Legislature contemplated that physically disabled persons should comply with the literacy qualification when it described the contents of a certificate of literacy to be issued by the Board of Regents, to wit: "... That the voter to whom it is issued is able to read and write English, or is able to read and write English save for physical disability only" (*ibid.* Section 168[1]). Accordingly the Board of Regents have adopted rules which, in pertinent part, provide (Rules of the Board of Regents of the University of the State of New York, Section 134):

"Evidence of literacy. Certificates of literacy shall be issued as follows:

.

2. To applicants who because of physical disability are unable to pass the New York State Regents literacy test but who can satisfy the examiner that they could pass the test if it were not for such disability. Upon the issuance of a certificate of literacy in such cases, the examiner shall write in ink across the face of

[fol. 39] the certificate of literacy the words 'physically disabled.'"

4. The provisions in Article II, Section 1, of the New York Constitution entitling persons who were eligible to vote prior to January 1, 1922, is a savings clause which properly applies prospectively. Since it protects citizens from *ex post facto* disfranchisement, it cannot be deemed to create classes. It is entirely uniform in its application to all citizens. There is not a scintilla of credibility in any assertion that it was aimed to counteract the Fifteenth Amendment as in the cases cited by petitioner and it would be devoid of any factual reliability to insinuate that it was designed against the ethnic group in which petitioner claims to be a member. This state constitutional provision was enacted over forty years ago and prior to the emigration of a large number of persons from Puerto Rico to New York City during the last twenty years.

5. Literacy in the language of the country of a citizen's national origin and the alleged availability of communication media in such language, however desirable, has already been held by the Courts as not relevant or determinative of the existence of a classification on ethnic grounds. Such an argument merely seems to show that the People of the State could, if they so choose, insure the intelligent use of the ballot by alternative enactment which is a matter completely for consideration by the citizens of the State in the area of suggested constitutional revision.

6. The Memorandum by the Government of the United States to the United Nations issued March 21, 1963, which petitioner cites, is not here pertinent. It recites the development and establishment of the new constitution for Puerto [fol. 40] Rico which like other statutes and treaties previously relied upon by persons similarly situated, merely govern the internal affairs of Puerto Rico. This document does not purport to and could not guarantee to petitioner any extraterritorial right to vote in New York without complying with its voting qualifications.

Wherefore, it is respectfully requested that this proceeding to relitigate the identical issue adjudicated by this Court and the federal (three judge) Court be dismissed in all respects.

George C. Mantzoros

Sworn to before me this 9th day of March, 1964.

Percy Schuberth, Assistant Attorney General of the State of New York.

[fol. 41] Affidavit of Service (omitted in printing).

[File endorsement omitted]

[fol. 42]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Special Term—Part I

Present: Hon. Henry Clay Greenberg, Justice.

Index Number 12434, 1963

In re: MARTHA CARDONA

—against—

JAMES M. POWER

MEMORANDUM DECISION—March 12, 1964

Petitioner institutes this article 78 proceeding for an order directing the Board of Elections of the City of New York to register petitioner as a duly qualified voter, or, in the alternative, directing said board to permit petitioner to take the literacy test in Spanish, and upon her passing

successfully such test, to register her as a duly qualified voter. Petitioner claims that she is a United States citizen of Puerto Rican birth, literate in the language of Puerto Rico, but not literate in the English language. Petitioner challenges the validity of Article II, section 1, of the New York Constitution, and the implementing statutes, sections 150, 168 and 201 of the Election Law, in so far as they require any person after January 1, 1922, except for physical disability, to be able to read and write English before being entitled to vote. Twice before unsuccessful challenges were made to their validity (*Camacho v. John Doe*, 31 Misc. 2d 692, aff'd 7 N. Y. 2d 762, and *Camacho v. Rogers*, 199 F. Supp. 155 [S. D. N. Y., three-judge court]). In *Lassiter v. Northhampton Company* (Board of Elections, 360 U. S. 45), the court upheld the constitutionality of a North Carolina statute requiring that a prospective voter be able to read and write any section of the Constitution of North Carolina in the English language. No valid ground of persuasive quality has been offered in behalf of the application as would justify a departure from prior rulings on the same issue. Accordingly, the application is denied and the petition is dismissed.

HCG
J.S.C.

I have compared the annexed copy of an order with the original thereof and found it to be a true and complete copy.

John L. Radlein, Acting Corporation Counsel.

[fol. 43]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 12434/63

In the Matter of the Application of
MARTHA CARDONA, Petitioner,
for an order pursuant to Article 78 of the
Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Respon-
dents,

—and—

LOUIS J. LEFKOWITZ, As Attorney General, appearing
specially pursuant to Section 71 of the Executive Law.

NOTICE OF APPEAL—March 27, 1964

SIRS :

Please Take Notice, that pursuant to § 5601 (b) (2) Civil Practice Laws and Rules, the petitioner, Martha Cardona, hereby appeals to the Court of Appeals from the final order, dated March 12, 1964, and entered herein in the office of the Clerk of the County of New York on March 13, 1964, wherein it is adjudged that the application be denied and the petition be dismissed for failure to state a cause of action, and the petitioner appeals from each and every part of said final order as well as from the whole thereof.

Dated: New York, New York, March 27, 1964.

Yours, etc.,

Paul O'Dwyer, Attorney for the Plaintiff-Appellant,
50 Broad Street, New York 4, New York.

[fol. 44]

To:

Leo A. Larkin, Esq., Corporation Counsel, Attorney for Defendant-Respondent, Municipal Building, New York 7, New York.

Louis J. Lefkowitz, Attorney General of the State of New York, Appearing specially pursuant to Executive Law, § 71, Respondent.

County Clerk, New York County.

[fol. 45] Stipulation Waiving Certification (omitted in printing).

[fol. 46]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

In the Matter of

MARTHA CARDONA, Appellant,

v.

JAMES M. POWER et al., Constituting the Board of Elections of the City of New York, Respondents,

and

LOUIS J. LEFKOWITZ, as Attorney-General,
Intervenor-Respondent.

OPINION—Decided May 27, 1965

Order affirmed, without costs. (See *Matter of Camacho v. Doe*, 7 N Y 2d 762.)

Concur: Judges Dye, Van Voorhis, Scileppi and Bergan. Chief Judge Desmond dissents and votes to reverse in the following memorandum in which Judges Fuld and Burke concur.

Chief Judge Desmond (dissenting). I dissent and vote to reverse and to grant the prayer of the petition. Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State's literacy-in-English requirements, is unreasonable and unconstitutionally discriminatory particularly since, by reason of the effective date of the literacy amendment to section 1 of article II of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy.

Order affirmed.

[fol. 47] Triple Certificate to foregoing paper (omitted in printing).

[fol. 48]

No. 11

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 27th day of May in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

Witness, the Hon. Charles S. Desmond, Chief Judge, *Presiding*.

Raymond J. Cannon, *Clerk*.

Sup. Ct.

No. 11

65

In the Matter of the application of
 MARTHA CARDONA, Appellant,
 for an order &c.

vs.

JAMES M. POWER, & ors., Members of and constituting the
 Board of Elections of the City of New York, Respondents,
 and

LOUIS J. LEFKOWITZ, Attorney General, appearing specially
 pursuant to Section 71 of the Executive Law, Intervenor-
 Respondent.

REMITTITUR—May 27, 1965

Be It Remembered, That on the 8th day of January in the year of our Lord one thousand nine hundred and sixty-five, Martha Cardona, the appellant—in this cause, came here unto the Court of Appeals, by Paul O'Dwyer, her attorney, [fol. 49] and filed in the said Court a Notice of Appeal and return thereto from the order of the Supreme Court, New York County, and James M. Power, & ors., Members of and constituting the Board of Elections of the City of New

York, the respondents, and Louis J. Lefkowitz, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law, the intervenor-respondent in said cause, afterwards appeared in said Court of Appeals by Leo A. Larkin, and Louis J. Lefkowitz, pro se, attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Paul O'Dwyer, of counsel for the appellant-, and by Mr. Samuel A. Hirshowitz, of counsel for the intervenor-respondent, no appearance for the respondents, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the order herein be and the same hereby is affirmed, without costs. (See *Matter of Camacho v. Doe*, 7 N Y 2d 762.)

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, without costs, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court [fol. 50] of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals
of the State of New York.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 51]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Tenth day of June A. D. 1965.

Present, Hon. Charles S. Desmond, Chief Judge, presiding.

Mo. No. 548

In the Matter of the Application of

MARTHA CARDONA, Appellant,

for an order &c.

vs.

JAMES M. POWERS & ors., Members of and constituting the Board of Elections of the City of New York, Respondents,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law, Intervenor-Respondent.

AMENDMENT TO REMITTITUR—June 10, 1965

An application to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said application be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant contended that the provisions of Article II, Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law as applied to her infringed her rights under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution of the United States in that such provisions unreasonably discriminated between classes of citizens. The Court of Appeals held that there was no violation of appellant's constitutional rights.

And the Supreme Court of New York County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

Gearon Kimball, Deputy Clerk.

[fol. 52]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Ninth day of July A. D. 1965.

Present, Hon. Charles S. Desmond, Chief Judge, presiding.

Mo. No. 612

In the Matter of the Application of

MARTHA CARDONA, Appellant,
for an order &c.

vs.

JAMES M. POWER & ORS., Members of and constituting the
Board of Elections of the City of
New York, Respondents,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of the Executive
Law, Intervenor-Respondent.

SECOND AMENDMENT TO REMITTITUR—July 9, 1965

A motion for a further amendment of the remittitur in the above cause to this Court having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be further amended by adding thereto the following:

Upon the appeal herein there were also presented and necessarily passed upon certain questions, in addition to those specified in the order of this Court dated June 10, 1965, under the Constitution of the United States, viz.: Petitioner contended that the literacy-in-English provision of Article II, section 1 of the New York State Constitution and sections 150, 155, 168 and 201 of the New York State Election Law as applied to her, constituted a violation of Article IV, sections 2 and 4 and Article VI, section 2 of the Constitution of the United States, in that such provision unreasonably and unconstitutionally discriminates against native-born citizens of the United States of Puerto Rican birth and denies them rights equal to those accorded native-born citizens of other parts of the United States, and that such provision violates the Treaty of Paris of 1898, the United Nations Charter, ratified as a treaty on August 8, 1945, and the express commitment of the United States to the United Nations in 1953 pursuant to such United Nations Charter. The Court of Appeals held there was no violation of petitioner's constitutional rights.

And the Clerk of the Supreme Court of New York County hereby is requested to return said remittitur to this court for amendment accordingly.

A copy

Gearon Kimball, Deputy Clerk.

[fol. 53]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index #12434/63

In the Matter of the Application of

MARtha CARDONA, Petitioner

for an order pursuant to Article 78
of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York, Respondents

—and—

LOUIS J. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of
the Executive Law.

NOTICE OF APPEAL TO THE SUPREME COURT OF
THE UNITED STATES—Filed August 19, 1965

I. Notice is hereby given that Martha Cardona, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York, as amended July 9, 1965, as previously amended June 10, 1965, and as initially rendered May 27, 1965, affirming an order of the Supreme Court of the State of New York, County of New York, a Court of original jurisdiction, dismissing appellant's petition requiring respondents, constituting the Board of Elections of the City of New York, to register her as a duly qualified voter, or, in the alternative, to permit her to take a literacy test in Spanish and upon successfully passing

such test, to register her as a duly qualified voter, which [fol. 54] said order of the said Supreme Court of the State of New York was made in this proceeding on March 12, 1964, and entered in the office of the Clerk of New York County on March 13, 1964.

This appeal is taken pursuant to 28 USCA Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Final judgment of the Court of Appeals of the State of New York, dated May 27, 1965.
 2. Amendment to final judgment of the Court of Appeals of the State of New York, dated June 10, 1965.
 3. Amendment to final judgment of the Court of Appeals of the State of New York, dated July 9, 1965.
 4. Majority opinion of the Court of Appeals of the State of New York, dated May 27, 1965.
 5. Minority opinion of the Court of Appeals of the State of New York, dated May 27, 1965.
 6. Notice of Appeal to the Court of Appeals of the State of New York, dated March 27, 1964.
 7. Order and opinion of Special Term, Part I, Supreme Court, New York County, Greenberg, J., dated March 12, 1964.
 8. Notice of Motion attached to petition dated August 6, 1963.
 9. Petition of Martha Cardona, dated August 6, 1963.
- [fol. 55] 10. Order permitting Attorney General to intervene, dated September 3, 1963.

11. Answer of Attorney General, dated February 28, 1964.
12. Affidavit of George C. Mantzoros, dated February 28, 1964.
13. Exhibit A (Petition of Jose Camacho in Federal Court) annexed to foregoing affidavit.
14. Exhibit B (Petition of Jose Camacho in Federal Court) annexed to foregoing affidavit.
15. Supplemental affidavit of George C. Mantzoros, dated March 9, 1964.
16. Stipulation waiving certification.

III. The following questions are presented by this appeal:

1. Whether a native born United States Citizen, of United States citizen parents, literate in the native language of the part of the United States in which she was born and educated properly be deprived of her right as a citizen to vote in elections solely because she cannot read or write in English, a language which is to her foreign.

2. Whether the provisions of Article II Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law of the State of New York, as applied to appellant infringe her rights under the 5th, 14th and 15th amendments to the Constitution of the United States, in that such provisions of New York Law unreasonably discriminate between classes of citizens, in that such provisions exempt from all literacy requirements persons who could have qualified to vote although illiterate prior to 1921, in that such provisions exempt from their application entirely persons unable to read and write English because of physical defects, and in that said provisions exempt from all literacy requirements veterans of the Armed Forces, occupants of veterans' hospitals re-

gardless of whether or not they themselves are veterans, while at the same time denying the right to vote to persons literate in the Spanish language, a language native to the part of the United States in which they were born and in whose United States government schools they were educated.

3. Whether the literacy in English provisions of Article II Section 1 of the New York State Constitution and Sections 150, 155, 168 and 201 of the New York State Election Law as applied to appellant constitute violations of Article IV Sections 2 and 4 and Article VI Section 2 of the Constitution of the United States in that such provisions of New York Law unreasonably and unconstitutionally discriminate against native born citizens of the United States of Puerto Rican birth and deny them rights equal to those accorded to native born citizens of other parts of the United States and that such provisions violate the Treaty of Paris of 1898, the United Nations Charter, ratified as a Treaty on August 8, 1945, and the expressed commitments of the United States to the United Nations in 1953, pursuant to such United Nations Charter.

Dated: New York, New York, August 18, 1965.

Paul O'Dwyer, Attorney for Appellant Martha Cardona, 50 Broad Street, New York, New York 10004.

[fol. 57] Affidavit of Service (omitted in printing).

[fol. 58] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 59]

SUPREME COURT OF THE UNITED STATES

No. 673, October Term, 1965

MARTHA CARDONA, Appellant,

v.

JAMES M. POWER, et al.

ORDER NOTING PROBABLE JURISDICTION—January 24, 1966

Appeal from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following Nos. 847 and 877.

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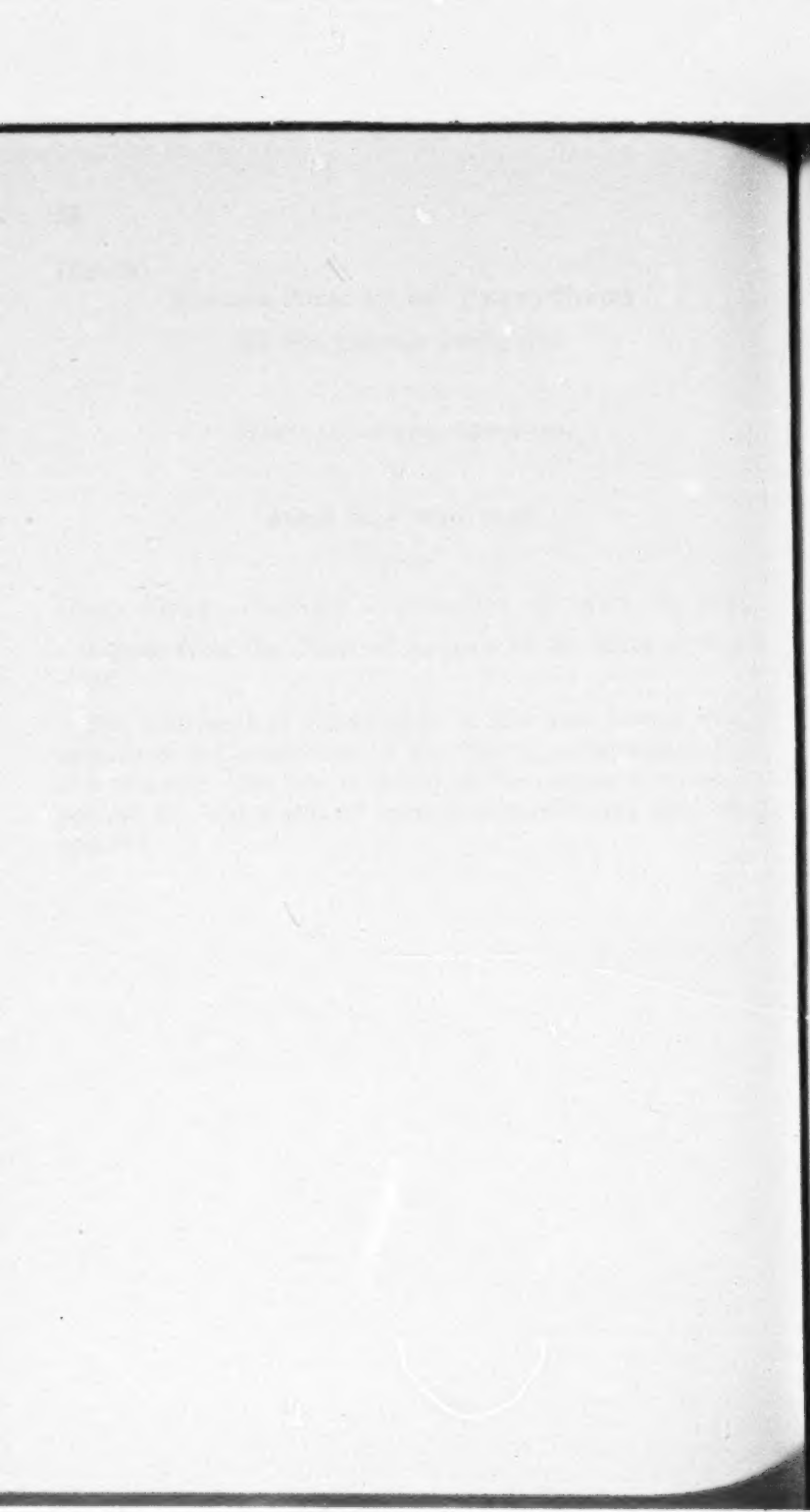
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IN THE
Supreme Court of the United States
October Term, 1965

No. 673 1

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J.
O'ROURKE and JOHN R. CREWS, Members of and
constituting the Board of Elections of the City of New
York,

Appellees,

and

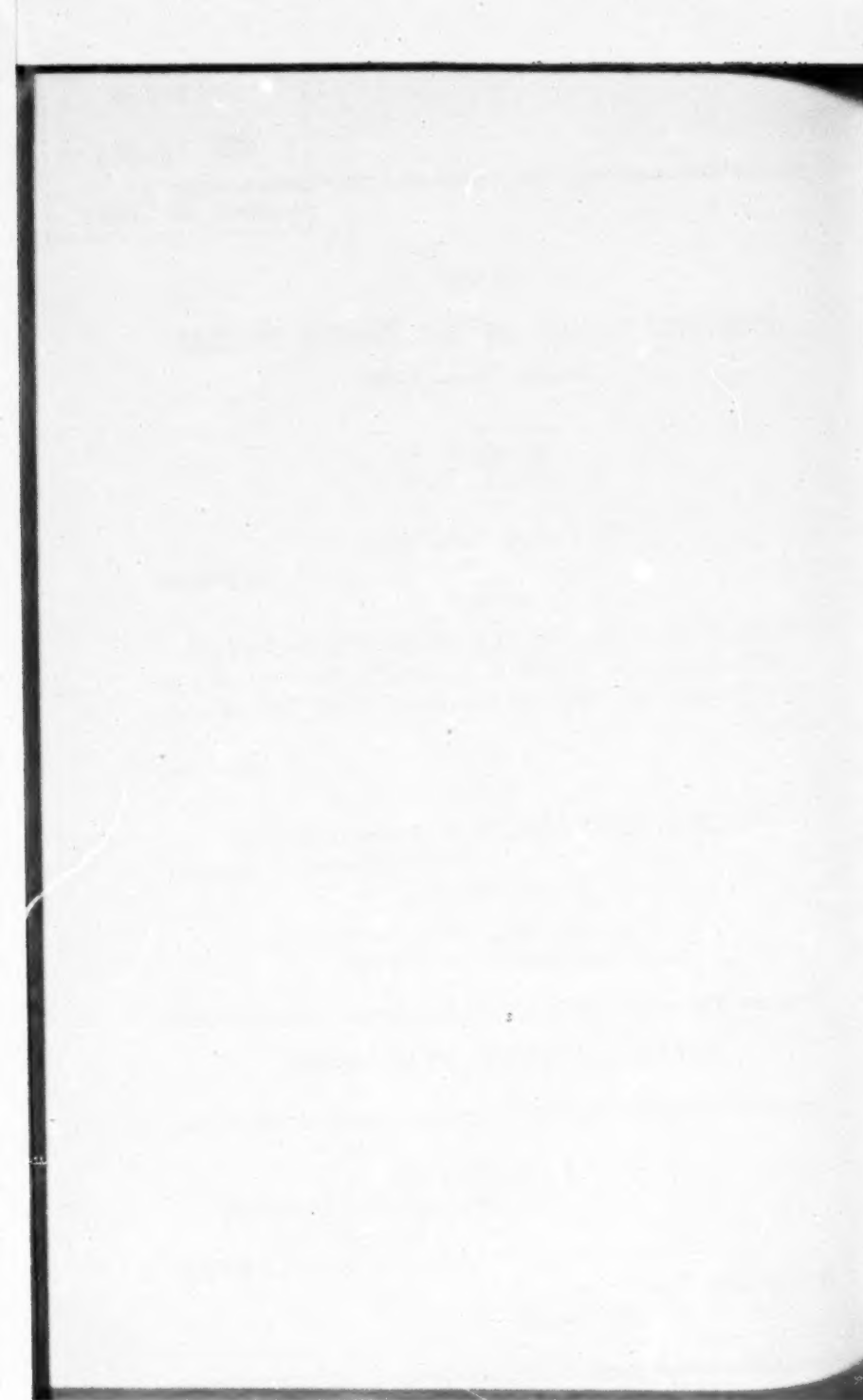
LOUIS J. LEFKOWITZ, as Attorney General,
Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

PAUL O'DWYER,
Attorney for Appellant,
50 Broad Street,
New York City.

W. BERNARD RICHLAND,
of Counsel.



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IN THE
Supreme Court of the United States

October Term, 1965

No.

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of any constituting the
Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

Appellant appeals from a final judgment of the New York State Court of Appeals (3 of the 7 Judges dissenting) made and entered May 27, 1965, amended June 19, 1965 and further amended July 9, 1965, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial Federal questions under the Constitution of the United States are presented.

Opinions Below

The majority and minority opinions in the New York State Court of Appeals are reported in 16 N. Y. 2d 639 (Appendix A). The decisions amending the remittiturs of

the Court of Appeals and setting forth the Constitutional questions raised in and passed upon by that Court are reported in 16 N. Y. 2d 708 and 827 (Appendix B).

The memorandum decision of the New York Supreme Court, Special Term Part I is reported in March 17, 1964, New York Law Journal (Appendix C).

Jurisdiction

This action was brought in the New York State Supreme Court, New York County, to challenge the validity of a series of New York laws under which the right of certain selected classes to vote in elections is conditioned upon their ability to read and write in the English language.

The judgment of the New York State Court of Appeals was made and entered as above noted. The jurisdiction of the United States Supreme Court to review this judgment by direct appeal is provided for by Title 28, § 1257 (2) of the United States Code. The following typical decisions of this Court sustain its jurisdiction to review this decision by direct appeal: *Westberry v. Sanders*, 376 U. S. 1 (1964); *Reynolds v. Sims*, 377 U. S. 533 (1964).

New York Law Involved

New York State Constitution, Article II, § 1 (Appendix D).

New York State Election Law, Sections 150, 155, 168 and 201 (Appendix D).

Questions Presented

The questions presented by this appeal as set forth in the Notice of Appeal herein served and filed August 19, 1965, are:

1. Whether a native born United States citizen, of United States—citizen parents, literate in the native language of the part of the United States in which she was born and educated can properly be deprived of her right as a citizen to vote in elections solely because she cannot read or write in English, a language which is to her foreign.

2. Whether the provisions of Article II Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law of the State of New York, as applied to appellant infringe her rights under the 5th, 14th and 15th amendments to the Constitution of the United States, in that such provisions of New York Law unreasonably discriminate between classes of citizens, in that such provisions exempt from all literacy requirements persons who could have qualified to vote although illiterate prior to 1921, in that such provisions exempt from their application entirely persons unable to read and write English because of physical defects, and in that said provisions exempt from all literacy requirements veterans of the Armed Forces, and occupants of veterans' hospitals regardless of whether or not they themselves are veterans, while at the same time denying the right to vote to persons literate in the Spanish language, a language native to the part of the United States in which they were born and in whose United States government schools they were educated.

3. Whether the literacy in English provisions of Article II Section 1 of the New York State Constitution, and Sections 150, 155, 168 and 201 of the New York State Election Law as applied to appellant constitute violations of Article IV Sections 2 and 4 and Article VI Section 2 of the Constitution of the United States in that such provisions of New York Law unreasonably and unconstitutionally discriminate against native born citizens of the United States of Puerto Rican birth and deny them rights equal to those accorded to native born citizens of other parts of the United States and in that such provisions violate the Treaty of Paris of 1898, the United Nations Charter, rati-

fied as a Treaty on August 8, 1945, and the expressed commitment of the United States to the United Nations in 1953, pursuant to such United Nations Charter.

Statement of the Case

These are the circumstances, as alleged in the Petition, out of which this proceeding arose:

Martha Cardona, the Petitioner, is a native-born citizen of the United States, as were both her parents. She was born in Puerto Rico, then, as now, a part of the United States, whose common language is Spanish. She was educated in Puerto Rico in schools supported by the United States Government. The curriculum in those schools is substantially identical to those in other parts of the United States, and the text books used are identical to those in common use in other parts of our country, the only substantial difference arising out of the fact that the lessons and the texts are in the language in common use in the areas involved. In Petitioner's case the language used was that common in Puerto Rico—Spanish. Since 1948, petitioner has been a resident of New York City. She is married and has three children, all of whom were born in New York City. She is literate in her native language, Spanish. She does not read and write English. She has a general understanding of government and politics, at least equal to that of adult citizens, residents and voters of New York. She is interested in her government and desires to play the proper citizen's role in her government. Before taking up residence in New York City, petitioner lived in Puerto Rico where she regularly voted in Gubernatorial, legislative and municipal elections, pursuant to the provisions of 48 U. S. Code, Ch. 48. Petitioner is a regular reader of the New York City Spanish-language daily newspapers and periodicals and a regular listener to the broadcasts of the Spanish-language radio stations in New York City, each of which media of communication provide as much or more

coverage of government and politics as do most English papers and radio stations.

The answer admitted that on July 23, 1963, petitioner appeared at the New York City Board of Elections, and asked to be registered and enrolled as a voter. She presented evidence of her citizenship, age and residence, none of which was questioned or disputed. The Board of Elections required that Petitioner submit to a literacy test in the English language. Petitioner informed the Board that she was unable to pass such a test in the English language, and requested that she be given a literacy test in her native language, Spanish. This the Board of Elections refused to do and rejected Petitioner's request for enrollment as a voter upon the sole and exclusive ground that she was unable to pass a literacy test in English, a language which to her is foreign.

The answer admitted that the sole basis upon which the Board of Elections rejected Petitioner's demand that she be enrolled as a voter is the provisions of Article II, Sec. 1 of the New York Constitution (and the provisions of Sections 150, 162 and 201 of the Election Law, which purportedly carry out the cited provision of the Constitution) which, in part, provides that "after January 1, 1922 no person shall become entitled to vote * * * unless such person is also able, except for physical disability, to write and read English".

Petitioner challenged the validity of the cited provisions of the New York Constitution and Election Law insofar as they purport to apply to United States citizens of Puerto Rican birth, literate in the language of Puerto Rico, and not literate in the English language.

Briefly stated, the principal grounds upon which petitioner asserts the unconstitutionality of the English-literacy test provisions of the New York State Constitution and the provisions of the Election Law which purport to carry them out are:

1. The constitutional provision contains a "grandfather clause" exception in favor of qualified voters as of the date of the adoption of the provision and of certain other classes which, by unreasonably discriminating against others, infects the entire provision.

2. The statutory and constitutional provisions contain exceptions in regard to veterans and veterans' dependents and dependents of veterans' dependents, which by unreasonably discriminating against others, infects the entire pattern of literacy requirements.

3. The literacy-test provisions are unrelated, either in purpose or effect, to determining the ability of citizens competently to exercise the elections franchise and are designed not to assure qualification to vote but disqualification.

4. By depriving of their franchise United States born citizens fully literate in the language native to the part of the United States in which they were born, upon the sole ground that they are not literate in the language native to another part of the United States, such English-literacy test provisions, deprive those citizens of the privileges and immunities guaranteed to all citizens of the United States and defeat the principal of reciprocal rights and immunities which lies at the base of those guarantees.

5. The English-literacy test requirements insofar as they preclude Puerto Rican-born United States citizens from exercising their franchise constitute an unlawful discrimination based upon race.

6. The English-literacy test requirements insofar as they are applied to Puerto Rican-born citizens, violate the Treaty of Paris pursuant to which Congress alone is permitted to legislate in regard to the political rights of such Puerto Rico-born citizens, and violate United States Statutes which carry out that Treaty, and are in conflict with the Congress-enacted Constitution of Puerto Rico which forbids the application of literacy tests to Puerto Rico-born citizens.

7. The English-literacy test requirements are in direct conflict with the formal commitment made by the United States to the United Nations in regard to the political rights of Puerto Rico-born United States citizens.

The factual basis upon which these grounds are asserted are set forth in detail in the petition.

Since the dismissal of the petition was on the law alone, the complete accuracy of the factual allegations must be assumed for the purpose of this appeal.

The New York Supreme Court at Special Term, denied petitioner's application and dismissed the petition as a matter of law, with a short opinion. The decision is founded upon a prior decision of New York Courts in *Camacho v. Rogers*, 7 N. Y. 2d 762 and a decision by a three-judge Court in *Camacho v. Rogers*, 199 F. Supp. 155.

The Court of Appeals of New York, to which a direct appeal was taken pursuant to N. Y. C.P.L.R. 5601 (b) 2, affirmed, three of the seven Judges dissenting. The majority decision was expressed in a brief memorandum which merely referred to that Court's decision without opinion in *Camacho v. Rogers*, 7 N. Y. 2d 762.

Chief Judge Desmond wrote a dissenting opinion in which he was joined by Judges Fuld and Burke. That opinion stated, in part (16 N. Y. 2d 708, 710):

"Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State's literacy-in-English requirements, is unreasonable and unconstitutionally discriminating, particularly since by reason of the effective date of the literacy amendment to Article II, Section 1 of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy."

Presentation of the Federal Questions

As noted above, the Federal Constitutional questions presented upon this appeal were first raised in the Petition to the New York Supreme Court initiating this action.

They are further set forth in the amended remittitur of the Court of Appeals of New York referred to above and set forth in Appendix B.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

1. The exemption from literacy test requirements of pre-1921 citizens, physically disabled citizens and a host of other classes of citizens on bases utterly unrelated to voter qualification infects the whole pattern of New York literacy-in-English laws and renders them totally invalid.

A. The operative provision of the New York Constitution (Art. II, § 1) and the provisions of the New York Election Law (§ 162[2]) limits the requirement of literacy to citizens who reach the stage at which they become qualified to vote "after January 1, 1922," and, in addition, exempts from the literacy requirements persons whose illiteracy stems from a "physical" disability. Thus, a person totally illiterate is permitted to register and vote if he was a citizen and resident of New York State prior to January 1, 1921, even though such persons have never before voted in an election (see *Matter of Ferayorni v. Walter*, 202 N. Y. S. 91, 121 Misc. 602). Thus, the constitutional provision referred to is infected by an invalid "grandfather clause" which effects an unwarranted discrimination against non-literate persons who achieved ordinary voting status after January 1, 1922.

The purpose of the exemption provision is plain; it was to assure the continuance of voting rights to native-born New Yorkers and other presently qualified residents and

to deny voting rights to later-arriving New York residents and to persons later-obtaining American citizenship. Under the exemption an illiterate native-born New Yorker, who had never voted before, would be allowed to vote, but a similarly situated United States-born citizen migrating to New York from Alabama or Mississippi after January 1, 1922 would not be allowed to vote, and neither would a native-born United States citizen migrating from Puerto Rico, after 1922, even though literate in the language of his place of birth, or a United States citizen, literate in the language of his place of birth, naturalized after 1921. There is obviously no rational basis for such discrimination. A citizen who had that status in 1922 is obviously no more competent to play a full citizenship role than a citizen who achieved that status in 1942 or 1962. Yet, under the cited provisions of the Constitution, a totally illiterate person who had reached the age of 21 before January 1, 1922 is permitted to vote, while his neighbor, who is fully literate in half a dozen languages other than English is denied the right to vote, merely because he was not 21 years old, citizen and resident of New York on January 1, 1922. Such a distinction is irrational and unsupportable as a matter of law.

Grandfather clauses, indistinguishable in principle from the one here under review have been repeatedly struck down by this Court. See, *e.g.* *Guinn v. U. S.*, 238 U. S. 347; *Lassiter v. Northampton Election Board*, 360 U. S. 45. See also, *Lassiter v. Taylor*, 152 F. Supp. 295.

The provisions of law embodying the literacy test are manifestly not related to determining the ability of a citizen to exercise the elective franchise, either in their purpose nor in their effect. As recent extensive United States Senate Hearings have shown (*Literacy Tests and Voter Requirements in Federal and State Elections*, Hearings before Subcommittee on Constitutional Rights of Judiciary Committee, 87th Congress, 2nd Session I 1962),

the history of these provisions and provisions similar to them in the laws of other States, reveals that their purpose is to exclude certain groups of citizens from taking part in elections and to reduce them to a second-class status. The terms of the provisions referred to show that, in their effect, they make irrational distinctions between citizens of differing racial background and serve not to assure qualification to vote but disqualification. Such, too, is the history of New York's literacy laws. See *Debate on the Literacy Test*, N. Y. Times, Section 7, p. 2, Oct. 23, 1921; 3 Rev. Rec. N. Y. State Constitutional Convention 1915, pp. 3021-3055.

B. The irrational, discriminatory and totally invalid character of New York's literacy requirement is further revealed by numerous exceptions which have been carved out, in addition to those discussed above.

Thus, New York Election Law § 155 provides for absentee registration by inmates and patients and resident-relatives of inmates and veterans in Veterans' hospitals. In the case of a new order so confined to such a hospital his mere "signature" to an application for such registration is deemed to

"constitute *conclusive* proof of his or her literacy"

and if such person is "unable to sign the application" the mere certification of his oath

"shall constitute *conclusive* proof of his or her literacy."

This exemption from the literacy test applies not only to veterans but also to "the spouses, parents and children" of veterans "whether living or dead" when they are veteran-institution inmates, and to *their* "spouses, parents and children" who are "with such inmates" (id, subd. 11).

Again, under New York Election Law § 168[6], the mere presentation of a certificate of honorable discharge from the armed forces constitutes

“conclusive proof of his or her literacy.”

Thus, a person totally illiterate in any language is qualified to vote under New York law, if he is a veteran or, whether or not he is a veteran, if he is confined to a Veterans' institution, or is staying with any inmate of a veteran institution, yet a person fully literate in the language of his place of birth in the United States is deprived of his right to vote unless he is also literate in the language common to other parts of the United States.

C. Finally, in the light of the present status of the arts of communication, the literacy test is particularly lacking in justification. For, although in the 1920's when the literacy test provision was incorporated into the Constitution, reading matter was the principal means of mass communication, such is far from the fact today. In contrast, at the present time radio and television have taken over by far the largest share of the area of mass communication, particularly in the field of government and politics. See *e.g.* Christenson & McWilliams-*Voice of the People*, (1962) pp. 39-53; Tyler, *Television and Radio* (1961), *of Mass Communication*, (1954); Evans, *The Eighth Art*, 1962) pp. 39-53; Tyler, *Television and Radio*, (1961), pp. 109, *et seq.*

Of course, the circumstance that the challenged provisions of the New York State Constitution and parts of the New York Election Law have existed for over forty years, does not lend them validity. For the literacy test was devised “as a cloak to discriminate against one class or group” (See Douglas, J. in *Gray v. Sanders*, 372 U. S. 368, 379), and the passing of the years and the changes in methods of mass communication have accentuated this quality.

In origin, purpose, operation and effect the challenged provisions of law are discriminating and void. They are direct violations of the Equal Protection clause of the 14th Amendment. Upon this ground alone the English literacy test requirements of New York State Constitution Article II § 1 and Election Law §§ 150, 168 and 201 (1) are invalid.

2. In violation of the 14th and 15th Amendments, the English literacy test requirements invalidly deprive native-born U. S. Citizens of Puerto Rican origin, whose native language is Spanish, of their basic citizenship rights.

We turn now to a consideration of the validity under the 14th and 15th Amendments of the cited provisions of the New York State Constitution and the provisions of the New York Election Law referred to as they apply to American-born citizens of Puerto Rican birth, literate in their own language and not literate in the English language.

4. At the outset, attention is called to a commonly overlooked but significant distinction which exists between the United States citizens of Puerto Rican origin and other so-called foreign language groups. The Puerto Rican is no more foreign-born than is a person born in New York or Ohio. He is a native American, and he can no more shed his citizenship (except by attaining citizenship in another nation) than he can shed his own skin. The language he speaks is just as American as the language spoken by the residents of New York or Ohio. Indeed, it was earlier in common use in our country than English. The Puerto Rican's culture is as American as the New Yorker's or the Ohioan's. All share a common heritage, whose special values lie in their differences as well as in their similarities and in the contributions each makes to the multitude of cultures of which the American culture is an amalgam.

Upon this aspect of the case, we address ourselves to the basic provision of the Federal Constitution, which, we submit, controls here; the first section of the 14th Amendment:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws."

That petitioner is a born citizen of the United States is undisputed; that it therefore follows that she has by her residence attained citizenship of New York is unquestioned. There remains only the question whether the challenged provisions of the New York Constitution (and the provisions of the Election Law which purport to carry it out) deprive her of her New York State citizenship or constitute laws which "abridge" her "privileges or immunities," as a citizen of the United States or deny her "equal protection of the laws."

It is submitted that the question need only be asked to be answered. For clearly, petitioner cannot properly call herself a "citizen" of New York, if a basic right of citizenship—the right to vote, is denied to her, particularly when the only reason for that denial is her natural state as a Puerto Rican born citizen, whose native language differs from that commonly prevalent in New York.

Can it be said that the "law" pursuant to which this deprivation of citizenship rights is denied petitioner does not "abridge" her "privileges and immunities" and does not deny her "equal protection of the laws"? Surely not. Consider: non-literacy in the English language is an inherent quality of United States citizens of Puerto Rican birth, as much as is the quality of their skin color or

other physical characteristics. Requiring that native-born United States citizens of Puerto Rican origin be able to read and write English before attaining citizenship rights in New York is the equivalent of requiring that they be born in an English-language part of the United States as a condition of attaining New York State citizenship. Both are clearly offensive to the concept of National citizenship, which is basic in our form of government. If by virtue of an inherent quality, tied to their very nature, and resting upon the part of United States territory from which they came, United States citizens can be deprived of their citizenship rights, then the cited provision of the 14th Amendment is rendered meaningless.

The right to vote is a basic right of all citizens of our Nation. Without that basic right no person can claim to be in possession of full and equal citizenship in a democracy or under a republican form of government.

As this Court held in *Westbery v. Sanders*, 84 S. Ct. 526, 545 (1964), and repeated in *Reynolds v. Sims*, 84 S. Ct. 1362, 1380 (1964):

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory, if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.”

Petitioner pays taxes for the support of the government. She stands ready, as all of her class, to serve her country in war. In the service of the army of the United States Americans of Puerto Rican origin have not been asked to take literacy tests in English—and Puerto Ricans have fallen before enemy guns in three wars in which our country was in jeopardy. She is subject to the laws of her country. She sustains all of the duties and obligations of

citizenship, yet she has been denied the one right of citizenship which is greater than all others: the right to join in choosing who shall govern her. The rights of citizens of the United States must be reciprocal or discrimination necessarily results. Under the Constitution of the Commonwealth of Puerto Rico, adopted by the Puerto Rico on March 3, 1952, and amended and ratified by the United States Congress on July 3, 1952 (30 Stat. 1759) not only may an English-speaking New York citizen who moves to Puerto Rico vote in elections held there, notwithstanding his inability to read or write the native language of Puerto Rico, but the Constitution of Puerto Rico (Art. III, § 5, Art. VI, § 4), guarantees that he may be elected to office notwithstanding that he is literate only in English.

In contrast to these provisions, the cited provisions of New York law operate to automatically deprive petitioner of her basic rights of United States citizenship upon her achieving New York citizenship: In Puerto Rico petitioner was a duly qualified voter and as such voted in regular and special elections; by moving to New York and becoming a citizen of New York, it has, in effect been held by respondents, petitioner forfeits her basic citizenship rights. It is submitted that this is inconsistent with reason and law.

The United States citizenship which petitioner's birth in Puerto Rico endowed her with, was not a limited privilege to enjoy only such of those rights of citizenship as various State governments might see fit to accord to her: it is an unqualified right of citizenship and it includes the right to live in, and automatically attain full citizenship in every State of the Union. If by the accident of her birth in a part of our Nation in which the common language is Spanish petitioner can be deprived of her right to vote for President, Senator, Congressman, Legislator, Mayor and Councilman in the City where she lives, she is relegated to a "second-class citizenship" which, as this Court said recently, our Constitution prohibits (*Schnieder v. Rusk*, 84 S. Ct. 1187, 1190 [1964]).

3. By virtue of the Treaty of Paris, pursuant to which the United States attained jurisdiction over Puerto Rico, Congress has exclusive control over the civil and political rights of persons born in Puerto Rico. By a succession of federal statutes and by its enactment of the Constitution of Puerto Rico Congress has granted full United States citizenship to such persons and precluded the application to them of literacy tests. An English-literacy test requirement imposed upon the Spanish-speaking Puerto Ricans is totally inconsistent with such a grant of full citizenship and with the express policy of Congress.

Entirely apart from what we have already said, there are further considerations which compel the conclusion that the English-literacy test requirements of New York law cannot validly be applied to petitioner and other native-born United States citizens of Puerto Rican origin.

Puerto Rico was incorporated into the territory of the United States pursuant to the Treaty of Paris of 1898 (30 Stat. 1759). That treaty provided:

“The civil rights and political status of the native inhabitants [of Puerto Rico] shall be determined by Congress.”

In the Jones Act of 1917 (Public Law 600) and in later statutes (See, *e.g.* Nationality Act of 1940, ch. 876, Tit. I, subch. II) Congress expressly accorded full United States citizenship to native-born Puerto Ricans. They were, in the language of the Jones Act, “declared and shall be deemed and held to be citizens of the United States”. In none of those statutes has Congress in any way indicated that the “political rights” of persons born in Puerto Rico shall be dependent upon their ability to read and write English. Not only would such a condition be patently absurd and unjust, but it would violate the Treaty of Paris.

Precisely to the contrary, Congress has explicitly precluded political discrimination against Spanish-speaking, native-born Puerto Ricans. This Congress did by its enactment (66 Stat. 327) of Article VI, section 4 of the Constitution of the Commonwealth of Puerto Rico, which provides:

“No person shall be deprived of the right to vote because he does not know how to read or write or does not own property.”

The Treaty of Paris, the complex of statutes enacted pursuant thereto and the Congressionally-enacted Constitution of the Commonwealth of Puerto Rico are all, in the respects noted, at variance with the English-language literacy provisions of New York law above referred to, and those provisions of law are invalid as applied to petitioner and to other United States citizens of Puerto Rican birth, under the United States Constitution and particularly Article VI thereof, which provides that, “all treaties made under the authority of the United States shall be the Supreme Law of the Land”.

The Congress-enacted Constitution of the Commonwealth of Puerto Rico (the authority of which lies in the Treaty of Paris) is both implicitly and explicitly at variance with the English-literacy test requirements of New York law. That Constitution approved by the President and enacted by Congress (66 Stat. 327), closes its preamble as follows:

“We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere; our fervor for education; our faith in justice; our devotion to the courageous, industrious and peaceful way of life; our fidelity

to individual human values above and beyond social position, racial differences and economic interests; and our hope for a better world based on these principles."

The foregoing provisions of the Constitution of the Commonwealth of Puerto Rico, as adopted by the United States Congress, constitute the observance by Congress of the obligations cast upon it by the Treaty of Paris, under which Congress and Congress alone has power and authority to determine the political rights of American citizens of Puerto Rican birth. Recognizing that ours is not a single-culture Nation but a fusion of several cultures, principally English and Spanish, Congress has declared that both Spanish and English are the recognized tongues of our country and our hemisphere. This it has done, not only by providing that public elective office under the Puerto Rico Constitution which it enacted shall be open to those of either language, but it has gone further and expressly prohibited the application of literacy tests to citizens born in Puerto Rico, as a qualification for voting. Congress has recognized that the full citizenship status of Puerto Rican born Americans would not be attained if the exercise of those rights were dependent upon a reading and writing knowledge of a language which, to the Puerto Rican is foreign.

Upon these grounds, too, the provisions of New York law which preclude petitioner from exercising her citizen's right to vote solely upon the ground of her inability to read and write English are void as violative of Article IV, §§ 2 and 4; Article VI, Amendments V, XIV and XV of the United States Constitution.

4. The United States by a separate commitment to United Nations in regard to its citizens of Puerto Rican origin as well as by its adoption of the U. N. Charter, has undertaken to accord to them full citizenship rights, without regard to their language, and this precluded the imposition of literacy tests upon them.

In *Curran v. City of New York*, 191 N. Y. Misc. 229, affd. 275 N. Y. App. Div. 784, the Court expressly held that the United States and each of the States are bound by the United Nations Charter and by all commitments made by the United States under and pursuant to that Charter. And this leads us to the final and independent argument against the application of the English-literacy test requirements to petitioner and other United States-born citizens of Puerto Rican origin.

We note at the outset that the United Nations Charter is a "multilateral treaty" which was signed and ratified by the President and the Senate pursuant to the Treaty power, embodied in United States Constitution Art III, § 2, para. 2 (*Curran v. City of New York, supra*), and that its preamble requires the United States, as a party, to accord "respect . . . for fundamental freedoms for all without distinction as to race, sex, language or religion" (id.). "... these provisions", Justice Hill observed in the *Curran* case, "are the law of the land."

However, we need not rest there. For, in 1953, the government of the United States formally and expressly committed itself to the United Nations to accord to its citizens of Puerto Rican birth full and complete political rights. This, the United States Government did as part of an elaborate presentation, the purpose of which was to exempt itself from United Nations control over Puerto Rico as "colonial territory" of the United States, pursuant to Article 73 (e) of Chapter XI of the United Nations Charter. (*U. S. Participation in the U. N., Report*

by the President to the Congress for the year 1953, pp. 181, *et seq.*). Upon the basis of this commitment, the General Assembly of the United Nations adopted a Resolution declaring Chapter XI of the United Nations Charter inapplicable to Puerto Rico (i.).

Addressing itself specially to the political rights accorded to the people of Puerto Rico, the "*Memorandum by the Government of the United States, etc.*" submitted to the United Nations on March 21, 1953, stated that the people of Puerto Rico have had:

"... universal adult suffrage since 1939. There have been no property requirements since 1906 and the last literacy requirements were removed in 1935."

It further noted that full and complete United States citizenship has been enjoyed by the Puerto Rican people since 1917, and that, "the Constitution of the Commonwealth (of Puerto Rico) is similar to that of a State of the Federal Union". It further assured the General Assembly:

"The people of Puerto Rico continue to be citizens of the United States as well as Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable to Puerto Rico . . . The People of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage, in free and periodic elections in which differing political parties offer candidates, and which are assured freedom from undemocratic practices by the Constitution itself."

The commitment made formally by the Government of the United States to the General Assembly of the United Nations, constitutes, under the United Nations Charter which was duly ratified by the President of the United States, by and with the advice and consent of the Senate of the United States on August 8, 1945, an exercise of

the treaty and foreign relations powers of the Government of the United States pursuant to Article VI of the Constitution of the United States and the United Nations Participation Act (22 U. S. C. §§ 287, *et seq.*), and as such, binds the United States and each State of the Union (*Curran v. City of New York, supra*), in the language of Article VI of the Constitution, "any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

The imposition upon United States citizens of Puerto Rican birth of the intolerable and unreasonable condition that in order to exercise their political rights as United States citizens under the commitment aforementioned they must learn a language which to them is foreign, directly violates the essence of their citizenship and effectively cancels out that commitment, in contravention of Article VI of the United States Constitution, the United Nations Participation Act, the Charter of the United Nations, and the formal commitment referred to. If any State is permitted to require that Spanish-speaking citizens of Puerto Rico origin must be English-speaking in order to attain full citizenship, the result would be to nullify their United States Citizenship and take away what Congress has granted and what the United States government committed itself to in the United Nations. Consequently, for these reasons, too, the application to petitioner of the provisions of New York law referred to, the denial by respondents of her application to register for voting upon the sole ground of her inability to read and write English and their denial of her demand that she be permitted to take a voter's literacy test in her own language, Spanish, are all acts contrary to supervening Federal Constitution law and treaty.

CONCLUSION

It is apparent that substantial and highly significant questions of Constitutional law are presented by this appeal. The distinguished Chief Judge of the New York Court of Appeals and two of his colleagues, all outstanding jurists, have so expressed themselves. These questions are neither resolved nor involved in the recently-enacted Civil Rights Law; they stand separate and independent of that law. However, in measuring the significance and substantiality of the questions presented by this appeal we submit that it is appropriate to call attention to the historic March 15, 1965 address of the President in which he characterized it as "wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country."

It is to right this great wrong that we are appealing to this Court and it is respectfully submitted that our action presents questions of grave Federal concern which this Court should consider and determine.

Respectfully submitted,

PAUL O'DWYER,
Attorney for Appellant,
50 Broad Street,
New York City.

W. BERNARD RICHLAND,
of Counsel

APPENDIX A

Opinions of New York Court of Appeals

MEMORANDUM OPINION OF MAJORITY

[16 N. Y. 2d 639]

In the Matter of **MARTHA CARDONA**, Appellant, v. **JAMES M. POWER** et al., Constituting the Board of Elections of the City of New York, Respondents, and **LOUIS J. LEFKOWITZ**, as Attorney-General, Intervenor-Respondent.

Argued May 17, 1965; decided May 27, 1965.

Elections—literacy test—Special Term dismissed petition for order directing Board of Elections to register petitioner as duly qualified voter or permit petitioner to take literacy test in Spanish—New York State Constitution (art. II, §1) and Election Law (§§ 150, 168, 201) require voters to be able to read and write English—contention that constitutional and statutory requirements were invalid—order affirmed.

APPEAL, on constitutional grounds, from an order of the Supreme Court at Special Term (**HENRY CLAY GREENBERG**, J.), entered March 13, 1964 in New York County, dismissing the petition in a proceeding under article 78 of CPLR for an order directing the Board of Elections of the City of New York to register petitioner as a duly qualified voter or, in the alternative, directing said board to permit petitioner to take the literacy test in Spanish and, upon her passing successfully such test, to register her as a duly qualified voter. The New York State Constitution (art. II, § 1) and the Election Law (§§ 150, 168, 201) require any person, after January 1, 1922, except for physical disability, to be able to read and write English before being entitled to vote. Petitioner was born in Puerto Rico and, since 1948, has been a resident of New York City. She is literate in

Appendix A—Opinions of New York Court of Appeals

Spanish but does not read and write English. In the Court of Appeals petitioner argued that the constitutional and statutory literacy requirements were invalid; that they deprived native-born United States citizens of Puerto Rican origin whose native language is Spanish of their basic citizenship rights in violation of the Fourteenth and Fifteenth Amendments of the United States Constitution; that the English literacy test requirement imposed upon Spanish-speaking Puerto Ricans is inconsistent with the grant of full citizenship and the policy of Congress, and that the United States, by a separate commitment to the United Nations in regard to its citizens of Puerto Rican origin, as well as by its adoption of the United Nations Charter, has undertaken to accord to them full citizenship rights, without regard to their language. The intervenor-respondent argued that no substantial constitutional question was presented by reason of prior decisions upholding the literacy test; that the United States Supreme Court had upheld the literacy test (*Lassiter v. Northampton Election Bd.*, 360 U. S. 45), and that the literacy test did not discriminate against petitioner in violation of the equal protection clause or any other provision of the Federal Constitution.

Paul O'Dwyer and W. Bernard Richland for appellant.

Louis J. Lefkowitz, Attorney-General (Samuel A. Hirshowitz, George C. Mantzoros and Barry J. Lipson of counsel), in his statutory capacity under section 71 of the Executive Law, intervenor-respondent.

No appearance for remaining respondents.

Donald S. Engel for American Jewish Congress, *amicus curiae*.

Order affirmed, without costs. (See *Matter of Camacho v. Doe*, 7 N. Y. 2d 762.)

Concur: Judges DYE, VAN VOORHIS, SCILEPPI and BERGAN. Chief Judge DESMOND dissents and votes to reverse in the following memorandum in which Judges FULD and BURKE concur.

*Appendix A—Opinions of New York Court of Appeals***DISSENTING OPINION OF CHIEF JUDGE DESMOND
(CONCURRED IN BY JUDGES FULD AND BURKE)**

Chief Judge DESMOND (dissenting). I dissent and vote to reverse and to grant the prayer of the petition. Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State's literacy-in-English requirements, is unreasonable and unconstitutionally discriminatory particularly since, by reason of the effective date of the literacy amendment to section 1 of article II of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy.

APPENDIX B

Remittiturs of New York Court of Appeals

COURT OF APEALS

STATE OF NEW YORK, ss.:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 27th day of May in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

Witness,

THE HON. CHARLES S. DESMOND,

Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk.

Remittitur May 27, 1965.

Sup. Ct.

No. 11

65

In the Matter of the Application of

THE APPLICATION OF
MARTHA CARDONA,

for an order &c.

Appellant,

vs.

JAMES M. POWER, & ors., Members of and constituting
the Board of Elections of the City of New York

Respondents,

and

LOUIS J. LEFKOWITZ, Attorney General, appearing specially
pursuant to Section 71 of the Executive Law,

Intervenor-Respondent.

BE IT REMEMBERED, That on the 8th day of January in
the year of our Lord one thousand nine hundred and sixty-

Appendix B—Remittiturs of New York Court of Appeals

five, Martha Cardona, the appellant—in this cause, came here unto the Court of Appeals, by Paul O'Dwyer, her attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Supreme Court, New York County, and James M. Power, & ors., Members of and constituting the Board of Elections of the City of New York, the respondents, and Louis J. Lefkowitz, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law, the intervenor-respondent in said cause, afterwards appeared in said Court of Appeals by Leo A. Larkin, and Louis J. Lefkowitz, pro se, attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Paul O'Dwyer, of counsel for the appellant, and by Mr. Samuel A. Hirshowitz, of counsel for the intervenor-respondent, no appearance for the respondents, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the order herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, without costs, &c., as aforesaid,

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

/s/ **RAYMOND J. CANNON**
Clerk of the Court of Appeals
of the State of New York

Appendix B—Remittiturs of New York Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Tenth day of June A. D. 1965.

Present,

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

Mo. No. 548

IN THE MATTER OF
THE APPLICATION OF MARTHA CARDONA,
Appellant,
FOR AN ORDER &C.

VS.

JAMES M. POWERS & ORS., Members of and constituting
the Board of Elections of the City of New York
Respondents,
and

LOUIS J. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of the Executive Law,
Intervenor-Respondent.

An application to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Appendix B—Remittiturs of New York Court of Appeals

ORDERED, that the said application be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant contended that the provisions of Article II, Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law as applied to her infringed her rights under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution of the United States in that such provisions unreasonably discriminated between classes of citizens. The Court of Appeals held that there was no violation of appellant's constitutional rights.

AND the Supreme Court of New York County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

GEARON KIMBALL,
Deputy Clerk.

Appendix B—Remittiturs of New York Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Ninth day of July A. D. 1965.

Present,

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

Mo. No. 612

o

IN THE MATTER OF
THE APPLICATION OF MARTHA CARDONA,
Appellant,
FOR AN ORDER &C.

VS.

JAMES M. POWERS & ORS., Members of and constituting
the Board of Elections of the City of New York
Respondents,
and

LOUIS J. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of the Executive Law,
Intervenor-Respondent.

o

A motion for a further amendment of the remittitur in the above cause to this Court having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Appendix B—Remittiturs of New York Court of Appeals

ORDERED, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be further amended by adding thereto the following:

Upon the appeal herein there were also presented and necessarily passed upon certain questions, in addition to those specified in the order of this Court dated June 10, 1965, under the Constitution of the United States, viz.: Petitioner contended that the literacy-in-English provision of Article II, section 1 of the New York State Constitution and sections 150, 155, 168 and 201 of the New York State Election Law as applied to her, constituted a violation of Article IV, sections 2 and 4 and Article VI, section 2 of the Constitution of the United States, in that such provisions unreasonably and unconstitutionally discriminates against native-born citizens of the United States of Puerto Rican birth and denies them rights equal to those accorded native-born citizens of other parts of the United States, and that such provision violates the Treaty of Paris of 1898, the United Nations Charter, ratified as a treaty on August 8, 1945, and the express commitment of the United States to the United Nations in 1953 pursuant to such United Nations Charter. The Court of Appeals held there was no violation of petitioner's constitutional rights.

AND the Clerk of the Supreme Court of New York County hereby is requested to return said remittitur to this court for amendment accordingly.

A copy

GEARON KIMBALL,
Deputy Clerk

Appendix B—Remittiturs of New York Court of Appeals

[16 N. Y. 2d Series]

In the Matter of MARTHA CARDONA, Appellant, v. JAMES M. POWER, et al., Constituting the Board of Elections of the City of New York, Respondents, and LOUIS J. LEFKOWITZ, as Attorney-General, Intervenor-Respondent.

Submitted June 7, 1965; decided June 10, 1965.

Motion to amend remittitur granted. Return of remittitur requested and, when returned, it will be amended by adding thereto the following. Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant contended that the provisions of section 1 of article II of the New York Constitution and sections 150, 155, 168 and 201 of the Election Law as applied to her infringed her rights under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution of the United States in that such provisions unreasonably discriminated between classes of citizens. The Court of Appeals held that there was no violation of appellant's constitutional rights. [See 16 N Y 2d 639.]

[16 N. Y. 2d 827]

In the Matter of MARTHA CARDONA, Appellant, v. JAMES M. POWER et al., Constituting the Board of Elections of the City of New York, Respondents, and LOUIS J. LEFKOWITZ, as Attorney-General, Intervenor-Respondent.

Submitted July 8, 1965; decided July 9, 1965.

Motion for a further amendment of remittitur granted. Return of remittitur requested and, when returned, it will

Appendix B—Remittiturs of New York Court of Appeals

be amended by adding thereto the following: Upon the appeal herein there were also presented and necessarily passed upon certain questions, in addition to those specified in the order of this court dated June 10, 1965, under the Constitution of the United States, viz.: Petitioner contended that the literacy-in-English provision of section 1 of article II of the New York State Constitution and sections 150, 155, 168 and 201 of the New York State Election Law, as applied to her, constituted a violation of sections 2 and 4 of article IV and section 2 of article VI of the Constitution of the United States, in that such provision unreasonably and unconstitutionally discriminates against native-born citizens of the United States of Puerto Rican birth and denies them rights equal to those accorded native-born citizens of other parts of the United States, and that such provisions violates the Treaty of Paris of 1898, the United Nations Charter, ratified as a treaty on August 8, 1945, and the express commitment of the United States to the United Nations in 1953 pursuant to such United Nations Charter. The Court of Appeals held there was no violation of petitioner's constitutional rights. [See 16 N Y 2d 639, 708, 717.]

APPENDIX C

Memorandum Decision of New York State Supreme Court, New York County

BY MR. JUSTICE GREENBERG

[N. Y. L. J. March 17th, 1964]

In *Re Cardona* (Power)—Petitioner institutes this article 78 proceeding for an order directing the Board of Elections of the City of New York to register petitioner as a duly qualified voter, or, in the alternative, directing said board to permit petitioner to take the literacy test in Spanish, and upon her passing successfully such test, to register her as a duly qualified voter. Petitioner claims that she is a United States citizen of Puerto Rican birth, literate in the language of Puerto Rico, but not literate in the English language. Petitioner challenges the validity of Article II, section 1, of the New York Constitution, and the implementing statutes, sections 150 168 and 201 of the Election Law, in so far as they require any person after January 1, 1922, except for physical disability to be able to read and write English before being entitled to vote. Twice before unsuccessful challenges were made to their validity (*Camacho v. John Doe*, 31 Misc. 2d 692, aff'd 7 N. Y. 2d 762, and *Camacho v. Rogers*, 199 F. Supp. 155 [S. D. N. Y., three-judge court]). In *Lassiter v. Northhampton Company* (Board of Elections, 360 U. S. 45), the court upheld the constitutionality of a North Carolina statute requiring that a prospective voter be able to read and write any section of the Constitution of North Carolina in the English language. No valid ground of persuasive quality has been offered in behalf of the application as would justify a departure from prior rulings on the same issue. Accordingly, the application is denied and the petition is dismissed.

APPENDIX D

New York Laws Involved

A. NEW YORK STATE CONSTITUTION, ARTICLE II, § 1

ARTICLE II—SUFFRAGE

§ 1. [QUALIFICATIONS OF VOTERS.]

Every citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state for one year next preceding an election, and for the last four months a resident of the county, city, or village and for the last thirty days a resident of the election district in which he or she may offer his or her vote, shall be entitled to vote at such election in the election district of which he or she shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided however that no elector in the actual military service of the state, or of the United States, in the army, navy, air force or any branch thereof, or in the coast guard, or the spouse, parent or child of such elector, accompanying or being with him or her, if a qualified voter and a resident of the same election district, shall be deprived of his or her vote by reason of his or her absence from such election district, and the legislature shall provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes and provided, further, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an election, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election dis-

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trict in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be entitled to vote at such election in the election district from which he or she has so removed.

Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English.

B. NEW YORK STATE ELECTION LAW**§ 150. QUALIFICATION OF VOTERS.**

A person is a qualified voter in any election district for the purpose of having his or her name placed on the register if he or she is or will be on the day of the election qualified to vote at the election for which such registration is made. A qualified voter is a citizen who is or will be on the day of election twenty-one years of age, and who has been an inhabitant of the state for one year next preceding the election, and for the last four months a resident of the county, city or village and for the last thirty days a resident of the election district in which he or she offers his or her vote, provided, however, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an election, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election district in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be entitled to vote at such election in the election district from which he or she has so removed. If a naturalized citizen, such person must, in addition to the foregoing provisions, have been naturalized

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at least ninety days prior to the day of election. In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A "new voter," within the meaning of this article, is a person who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight.

§ 155. VETERANS' ABSENTEE REGISTRATION.

1. A voter, other than a registered voter qualified to vote at the ensuing general election, may, if he is an inmate or patient in a veterans' bureau hospital in this state, be registered in the manner herein provided.

2. The board of elections in the county in which a veterans' bureau hospital is located shall appoint, after nomination by the respective county chairmen of the parties which in the preceding gubernatorial election polled the highest and next highest number of votes, one or more bipartisan boards of registration, each composed of two inspectors of election, who shall attend such hospital between the hours of nine o'clock in the morning and five o'clock in the evening on the seventh Thursday before the general election and, in the event that it be necessary for the completion of their herein described duties, on the seventh Friday before such election and such other days as may be necessary and then and there receive from inmates or patients therein the applications of such of them as desire and are qualified to be registered.

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3. Each application shall be made in writing and under oath, administered by a member of such board. Except as herein otherwise provided, it shall be signed by the applicant. If he state that he is unable to sign, such board shall administer to him the oath prescribed by section one hundred sixty-nine and each member thereof shall certify, at the bottom of the application, to the nature of the applicant's disability regarding his inability to sign.

4. The application shall state the facts and circumstances which the applicant alleges qualify him to apply for registration pursuant to this section. It shall contain facts from which may be determined his qualifications as a voter and the election district in which he resides. It shall be accompanied by an affidavit of the medical superintendent or other medical head of such hospital that the applicant is an inmate or patient therein and that he expects that the applicant will not be discharged from the hospital before the day following the next general election.

5. The signature of any new voter applying to be registered in the manner prescribed by this section shall constitute conclusive proof of his or her literacy. If an oath is administered to any new voter because such voter is unable to sign the application, the administering of such oath and the certification by the board, as prescribed in subdivision three of this section, shall constitute conclusive proof of his or her literacy.

6. Following the execution of the application and affidavit, as above described, such board shall give the applicant an enrollment blank, in the form prescribed by sections one hundred twenty-two and one hundred twenty-three. After the applicant marks the blank or has it marked for him or returns it unmarked, it shall be deposited by or

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for him in an envelope, together with such application and affidavit. The envelope shall bear upon its face the legend "Veteran's Absentee Registration Application." Before receiving the next application such board shall seal the envelope, address it to the board of elections in the county where the applicant resides and note upon a form provided for such purpose the date of the application, the name and residence address of the applicant and the name of the hospital at which the application was received.

7. At the end of each such day of registration each member of such board shall subscribe his full name and residence address to such list of applicants and shall together return the list and the sealed envelopes to the board of elections in the county where such hospital is located and the latter shall immediately separate for its own attention, in accordance with subdivision eight of this section, each envelope addressed to it and mail each other envelope to the board of elections to which it is addressed.

8. a. Each board of elections which receives such an envelope shall immediately file its contents, shall determine whether the applicant is already registered, and, if he is not, shall, in the manner provided in subdivision one of section one hundred eighteen for investigation of applications for absentee voters' ballots, investigate the truth of the statements contained in the application.

b. If it determines that the applicant is entitled to be registered as a qualified voter in such county, it shall, where permanent personal registration is not in effect, before the first day prescribed for local registration, enter in the copies of the appropriate election district register the voter's name and residence and the party, if any, in which he has enrolled; it shall securely attach the application in the signature copy of the register opposite the name of the voter, as thus entered, and note in the remarks

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column that the voter has registered by veteran's absentee registration.

c. Where permanent personal registration is in effect, the board of elections shall, in such case, forthwith cause a central registration board to fill out, on behalf of such applicant, a set of registration records, using the information furnished in his application, paste a photostatic copy of the applicant's signature, as the same appears on such application, in each space provided on the registration records for the insertion of the registrant's signature, and insert such registration records in the proper file maintained by it for such purpose. Such registration records shall be marked or stamped conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be. If an application for registration under this section or an application for an absentee ballot from a person otherwise entitled to be registered under this section is received and it appears that such applicant or person is already registered under permanent personal registration from the residence address stated on his application, his permanent personal registration records shall likewise be stamped or marked conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be.

9. The cost incurred by the county in which such veterans' bureau hospital is located, for the registration of voters as herein provided, shall be apportioned to the counties in which such voters reside in proportion to the number of applicants for such registration residing in such counties.

10. The secretary of state shall prescribe by proper rules and regulations for the administration of registration as herein provided and shall furnish the forms and supplies required therefor.

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11. The privileges of this section relating to veterans' absentee registration are hereby extended to the spouses, parents and children of honorably discharged members of the armed forces of the United States, whether living or dead, when such relatives are inmates of veterans' bureau hospitals or federal or state institutions provided for the care of such persons and to the spouses, parents and children of inmates and patients of veterans' bureau hospitals who are with such inmates and patients and for that reason will be absent from the counties of their residence at the time of the next general election and entitled to an absentee ballot under the provisions of subdivisions four and six of section one hundred seventeen, and each of such persons upon application, if otherwise lawfully entitled thereto, shall be registered in the manner provided by this section. All provisions of this section relative to the application for registration and to the powers and duties of boards of election and other election officers also shall apply to the registration of the persons above described.

12. a. In case the veterans' bureau hospital in which any veteran entitled to vote in this state is an inmate or patient, is located outside the state of New York, the signing of such veteran's name to an application for an absentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration wherever such registration is required.

b. The provisions of paragraph a of this subdivision are hereby extended to the spouse, parent or child of such veteran, accompanying or being with him or her, if a qualified voter and a resident of the same election district; the signing by such spouse, parent or child of his or her name to an application for an absentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration whenever such registration is required.

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c. Whenever an application under the foregoing paragraphs a and b of this subdivision is received by the board of elections, the board, where permanent personal registration is not in effect, shall cause to be entered in the appropriate election district register, the voter's name and residence, if it is not already thereon; and shall cause the application to be securely attached in the signature copy of the register opposite the name of the voter, and note in the remarks column that the voter has registered by veteran's absentee registration. Where permanent personal registration is in effect, the board shall proceed in the manner provided in paragraph c of subdivision eight of this section.

d. In either case, such signing, if the applicant be a new voter, shall constitute conclusive proof of his or her literacy.

e. Such application shall be accompanied by a certificate in the form prescribed in subdivision eight of section one hundred seventeen and all applications filed pursuant to the provisions of this subdivision shall be subject to the provisions of section one hundred nineteen so far as applicable.

§ 168. PROOF OF LITERACY AND REGULATIONS

1. The board of regents of the state of New York shall make provisions for the giving of literacy tests.

In election districts in which personal registration is required, a certificate of literacy issued to a voter under the rules and regulations of the board of regents of the state of New York to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be received by elec-

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tion inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

In election districts in which personal registration is not required, literacy tests may be given by the election inspectors on election and registration days only.

Literacy tests may be given by central registration boards to applicants for registration by such boards at any time during business hours within the period when central registration is permitted.

Literacy tests may also be given by veterans' absentee registration boards to applicants for registration by such boards, except in cases where the signing of an application constitutes conclusive proof of literacy as provided in section one hundred fifty-five of this chapter, at any time when such boards are in attendance at a veterans' bureau hospital for the purpose of the registration of qualified inmates or patients therein.

Such election inspectors in election districts in which personal registration is not required or central or veterans' absentee registration boards shall issue and file a certificate of literacy, under the same rules and regulations of the board of regents of the state of New York applying to districts in which personal registration is required, to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be filed by election inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

2. Any such certificate of literacy, when issued, shall bear an individual number and shall be in duplicate. One of such duplicates may be retained by the person to whom it is issued, and the other duplicate shall be the certificate

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received or filed by the election inspectors or by a central or veterans' absentee registration board, as the case may be. All duplicate certificates so received or filed by such inspectors and boards shall be retained by them and transmitted on the day received to the board of elections of the county, except in the city of New York where they shall be transmitted to the board of elections of such city, and be kept on file by such boards of elections. But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language or a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance. But the genuineness of the certificate and the identity of the voter shall remain questions of fact to be established to the satisfaction of the election inspectors and subject to challenge, like any other fact relating to the qualification of a voter.

If, however, such certificate, diploma, matriculation card or letter of certification cannot be produced, the appropriate board shall register the applicant upon the execution of an affidavit in substantially the following form:

*Appendix D—New York Laws Involved***ELECTION LAW**

State of New York }
 County of } ss.:

.....being duly sworn, deposes
 and says: that he lives at

That he is a duly qualified voter of the state of New
 York; that he completed the work up to and including the
 sixth grade of an approved elementary school, namely
 on 19....;

(name of school and location)

(or) of a public or private school accredited by the Com-
 monwealth of Puerto Rico in which instruction was carried
 on predominantly in the English language, namely,
on 19; (or)

(name of school and location)

of a higher school in which English was the language of
 instruction, namely

(name of school and location)

on 19....; (or) that he is a
 student at, that the certi-

(name of college or university)

ificate or diploma showing the completion of the work of
 such school was (destroyed) or (lost) or (is unavailable).

Sworn to before me, this

..... day of, 19....

.....
 Signature of voter

.....
 Official title of officer.

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Naturalization as a citizen of the United States, acquired on or after June twenty-seventh, nineteen hundred fifty-two, shall constitute conclusive proof of literacy provided that the new voter was required to and did establish, in the process of his naturalization, an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language. The election inspectors, if not satisfied that the new voter did establish such an understanding of the English language in the naturalization process, may require the execution of an affidavit in substantially the following form and the appropriate board shall thereupon register the applicant:

State of New York }
County of } ss.:

..... being duly sworn
deposes and says that he lives at
.....

That he is a duly qualified voter of the State of New York; that he was naturalized on day of 19.... in the United States District Court, District of the State of That in the course of such naturalization process he was required to and did establish that he has an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language.

Sworn to before me this
..... day of
19.....

.....
Signature of voter

.....
Official title of officer

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§ 201. DELIVERY OF BALLOT TO VOTER

1. While the polls of the election are open, voters who have not previously voted thereat may, for the purpose of voting, enter within the guard-rail, through the entrance provided therefor; but not more than twice as many voters as there are voting booths shall be within the guard-rail at one time, in addition to persons lawfully there for other purposes than voting. The voter shall give his name to the inspectors, and, if in a city or village of five thousand inhabitants or over, his residence by street and number, or if it has no street number, a brief description of the locality, and shall state whether or not he is over twenty-one years of age. An inspector shall then announce, loudly and distinctly, the name and residence of the voter. If the election be one where poll-books are required to be provided, his name and residence shall be entered in both such books by the inspectors in charge of the registers. A person shall not be allowed to vote in any election district at an election where voters are required to be registered unless his name shall be upon the register for such election district. A person shall not be allowed to vote the ballot of a party at a primary election in any election district unless his enrollment with such party appears in such register. A person shall not be allowed to vote unless he shall have signed his name or made an identification statement as required by section one hundred ninety-eight. In the case of a new voter, as defined by section one hundred fifty, at a general election or a special election for which voters are required to be registered under the provisions of this chapter, in an election district where registration is not required to be personal, if the words "new voter" were entered opposite his name in the registers, he shall not be allowed to vote unless it appear to the satisfaction of

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the board of inspectors, by the proof prescribed by section one hundred sixty-eight, that he is able to read and write English, except in the case of such a voter who is shown to be incapacitated therefrom by physical disability only. A new voter, as so defined, at an election for which voters are not required to be registered under the provisions of this chapter shall not be allowed to vote unless it appears to the satisfaction of the election officers, from such sources of information as may be available, that he is able to read and write English, except in the case of such a voter who is shown to be so incapacitated by physical disability only; and for such purpose the election officers may require him to produce a certificate of literacy described in section one hundred sixty-eight.

2. The right of any person to vote whose name is on the register shall be subject to challenge. If such voter is entitled to vote and is not challenged, or a challenge be decided in his favor, one of the clerks, or if there be no clerks the inspector assigned to the duty of delivering ballots, in the numerical order of the ballot or set, beginning with number one, and shall at the same time announce, loudly and distinctly, the number on the stub or stubs thereof. If the ballots are in sets, they shall be delivered in sets. If a new ballot or set of ballots be lawfully delivered to the same voter, a similar announcement shall be made as to the number on the stub or stubs of each new ballot or set delivered. Each ballot, when delivered, shall be folded in the proper manner for voting, which is: first, by bringing the bottom of the ballot up to the perforated line, and second, by folding both sides to the center or toward the center in such manner that when folded the face of each ballot shall be concealed, and the printed number on the stub and the indorsement on the back of the ballot shall be visible, so that the stub can be removed

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without removing any other part of the ballot and without exposing any part of the face of the ballot below the stub, and so that when folded the ballot shall not be more than four inches wide. The number on each ballot or set of ballots so delivered, as printed on the stub or stubs, shall be entered forthwith opposite the name of the voter in the proper column of the two copies of the register, or of the two poll-books if such books are required to be provided.

3. No person other than an inspector or clerk shall deliver to any voter within the guard-rail any ballot, and they shall deliver only such ballots as the voter is legally entitled to vote, other than sample ballots.

4. Voters entitled to vote who are in the polling place at or before the time fixed by law for the closing of the polls shall be allowed to vote.



NOV 15 1965

IN THE
Supreme Court of the United States ~~John F. DAVIS, CLERK~~

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J.
O'ROURKE and JOHN R. CREWS, Members of and con-
stituting the Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General of the
State of New York,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK

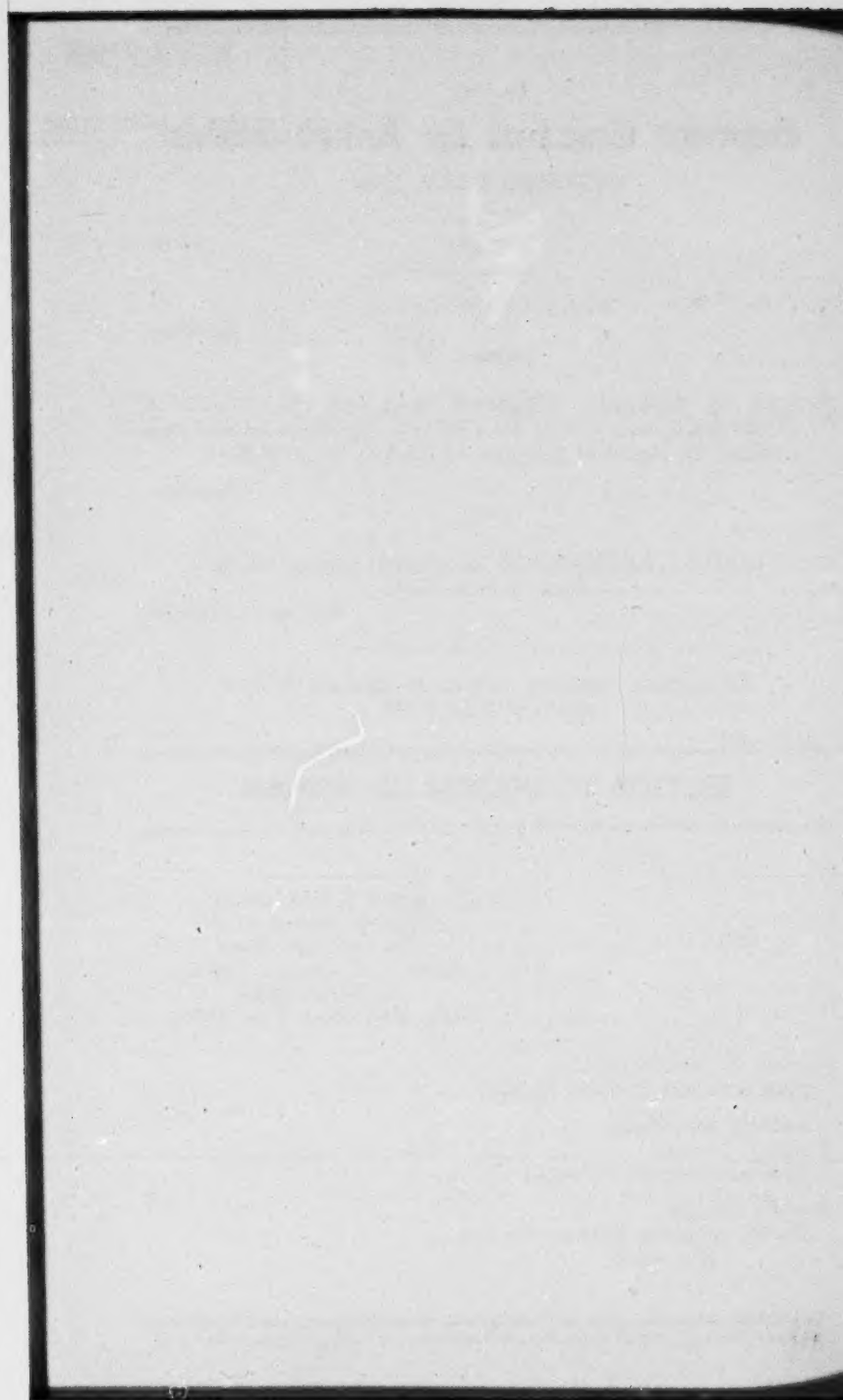
MOTION TO DISMISS OR AFFIRM

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLER, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York,

Appellees.

and

LOUIS J. LEFKOWITZ, as Attorney General of the
State of New York,

Intervenor-Appellee

MOTION TO DISMISS OR AFFIRM

Intervenor-appellee, Louis J. Lefkowitz, Attorney General of the State of New York, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the final judgment of the Court of Appeals of New York State, as amended, be affirmed or, in the alternative, that this appeal be dismissed.

Opinions Below

The opinions of the New York State Court of Appeals dated May 27, 1965 are reported at 16 N. Y. 2d 639. The decisions amending the remittitur are reported at 16 N. Y. 2d 708 and at 16 N. Y. 2d 827.

Jurisdiction

Appellant invokes the jurisdiction of this Court under United States Code, Title 28, § 1257(2)

Questions Presented

1. May the State of New York, in the exercise of its power to establish qualifications for voters, require prospective voters to demonstrate literacy in the English language?
2. Has the instant appeal become moot by virtue of Section 4(e) of the Voting Rights Act of 1965?

Statutes Involved

New York State Constitution, Article II, § 1 (Appellant's Appendix D); New York State Election Law, Sections 150, 155, 168 and 201 (Appellant's Appendix D).

Voting Rights Act of 1965, § 4(e) (*infra*, pp. 11-12); United States Constitution, Article IV, Sections 2, 4, Article VI, Section 2; Amendments V, XIV and XV.

Statement

Appellant alleges, *inter alia*, that she was born in Puerto Rico in 1923, that she attended school there for an unspecified number of years, that the classes attended were taught

in the Spanish language, that she can read and write Spanish but cannot read and write English and that she has resided in New York City since 1948. On July 23, 1963, appellant appeared before the Board of Elections of the City of New York and presented proof of her age, citizenship and residence. The Board of Elections, pursuant to statutory requirements, offered to her the literacy test in English. But she demanded a test in Spanish. In the absence of such a test in the Spanish language, and in the face of her refusal to take a test in English, the Board could not and did not enroll appellant as a voter.

Appellant then commenced a proceeding in Supreme Court, New York County, pursuant to Article 78 of the New York Civil Practice Law and Rules, for an order directing the New York City Board of Elections to register her as a duly qualified voter or, in the alternative, directing the Board to subject her to a literacy test in the Spanish language and, upon her passing such a test, to register her as a duly qualified voter. She contended that Article II, Section 1 of the New York State Constitution and Sections 150, 168 and 201(1) of the New York Election Law, were discriminatory and therefore unconstitutional because they provided that "after January 1, 1922, no person shall become entitled to vote * * * unless such person is also able, except for physical disability to read and write English".

The application was denied and the petition dismissed on March 12, 1964 (GREENBERG, J.) on the authority of *Camacho v. Doe*, 31 Misc. 2d 692, 221 N. Y. Supp. 2d 262 (Sup. Ct. Bronx Co. 1958), aff'd 7 N. Y. 2d 762, 163 N. E. 2d 140 (1959); *Camacho v. Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961) and *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45 (1959). On direct appeal to the New York Court of Appeals, the decision was affirmed on May 27, 1965 (16 N. Y. 2d 639). The remittitur was amended to show that questions under the Fifth,

Fourteenth and Fifteenth Amendments had been passed upon (16 N. Y. 2d 708) and to show that questions under Article IV, §§ 2 and 4, and Article VI, § 2, had been passed upon (16 N. Y. 2d 827).

Appellant attempts to circumvent the clear holding of *Lassiter* by attacking the legislative scheme in which the New York literacy provision is contained and by claiming the protection of certain treaties and statutes. Significantly, several challenges repeated here were advanced by the same counsel and rejected by the three-judge court in *Camacho v. Rogers*, *supra*, without appeal to this Court. Thus, it is argued that, because the English literacy requirement was passed to commence on a certain date, it is, in effect, a "grandfather clause"; that alleged exceptions in favor of veterans and their dependents voids the entire legislative scheme; and that the constitutional and statutory provisions bear no reasonable relation to voter qualifications.

Appellant also argues that she has been deprived of the privilege and immunities guaranteed her as a citizen; that English literacy requirements insofar as they apply to Puerto Rican-born citizens are an unlawful discrimination based upon race and that the English literacy requirements insofar as they apply to Puerto Rican-born citizens violate the Treaty of Paris of 1898 and subsequent statutes pursuant to which Puerto Ricans are citizens of the United States, and also violate the Constitution of Puerto Rico and the United Nations Charter.

It is appellee's position that *Lassiter v. Northampton County Board of Elections*, *supra*, is dispositive of the instant case, and that none of the numerous grounds for attack presented by appellant adds any substance to a question which no longer has substance.

ARGUMENT

Appellant's attack on New York State's requirement that a person be English-literate in order to vote does not raise a substantial federal question.

The New York Constitution, Article II, § 1, provides, *inter alia*, that:

"Notwithstanding the foregoing provisions, after January first, nineteen hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

Section 150 of the New York Election Law is to the same effect. Section 168 of the Election Law provides that literacy is to be determined either by examination, by proof that the applicant is an honorably discharged veteran, by the production of a certificate or diploma showing the completion of the work of six grades of an approved elementary school, or higher school in which English is the language of instruction, by the production of a certificate or diploma showing the completion of six grades in a school accredited by the Commonwealth of Puerto Rico in which English is predominantly the language of instruction, by a university matriculation card, by naturalization after June 27, 1952, or by affidavit attesting to any of the above. Veterans in veterans' hospitals may take an oath that they are qualified to vote, meeting each of the several qualifications and their signature is conclusive proof of literacy (Election Law, § 155[5]). If the voter is unable to sign, the board of elections members administering the oath may certify the nature of his inability (§ 155[3]) and such certification is conclusive proof of literacy (§ 155[5]). Since one of the prerequisites for voting is literacy, the oath obviously must include that fact. Only the nature of the

evidence of literacy is different from that for civilian voters (Cf. § 168). Indeed, for any person becoming eligible to vote after January 1, 1922 the nature of his inability to read or write must be such that but for that inability he would be literate. See Election Law §§ 168(3), 169.

In *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45 (1959), this Court upheld that portion of Section 4 of Article VI of the North Carolina Constitution providing:

“Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language” (360 U. S. at 47).

In discussing the scope of the of the states’ rights to set voter qualifications, this Court held (360 U. S. at 51-53):

“The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin v. Harper*, 205 Ga. 779, 55 S. E. 2d 221, appeal dismissed 339 U. S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an ‘independent and intelligent’ exercise of the right of suffrage. *Stone v. Smith*, 159 Mass. 413, 414, 34 N. E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.”

See also *Gray v. Sanders*, 372 U. S. 368, 379 (1963); *Camacho v. Rogers*, 199 F. Supp. 155 (S.D.N.Y., 1961); *Camacho v. Doe*, 31 Misc. 2d 692 (Bronx Co., 1958), aff'd 7 N. Y. 2d 762 (1959).

Thus, the constitutionality of a literacy test, given in English, would appear to be no longer open to question. Not only has this Court approved a test in English, but there would be little point to a literacy test if it were not given in English since the validity of such a test in this country is based on the fact that the greater part of written materials and of all other communication media are in English. *Camacho v. Rogers*, 199 F. Supp. 155, 159 (S.D.N.Y. 1961). In that case the three-judge court held:

"It is not unreasonable to expect a voter not only to be conversant with the issues presented for determination in choosing between candidates for election, but also to understand the language used in connection with voting. For example, there are presented in English on the ballot synopses of proposed constitutional amendments, titles of offices to be filled and directives as to the use of the paper ballot or voting machine. Finally, what is more proper than that the voter be literate in the language used to conduct the business of government in his state" (*Id.*).

Indeed, Congress has recognized the relationship between effective citizenship and English literacy and has made such literacy a prerequisite for naturalization (8 U.S.C. § 1423).

The New York literacy test is simple and objective. *Lassiter v. Northampton County Board of Elections*, *supra* at 52n.7; McGOVNEY, *THE AMERICAN SUFFRAGE MEDLEY* (1949) pp. 62-64; 31 *Notre Dame Lawyer* 257-58 (1956). It is administered "without regard to race, creed, color or sex. No charge is made that the test is improperly given or its contents unfair" (*Camacho v. Rogers*, *supra* at 159). A sample literacy test is annexed as an exhibit to the *amicus*

curiae brief of the United States in *Camacho v. Rogers*, a copy of which is appended hereto. The literacy test is Appendix C to that brief. In view of the simplicity of the test and impartiality with which it is administered, appellant's depiction of herself as a member of a group which is the victim of discrimination is unfounded. No discrimination was intended by the test. Indeed, in 1920 the total number of persons of Puerto Rican origin in New York State was 7719 of whom 7364 resided in New York City (Appendix B to appendix herein). The total population of the State was 10,385,227 (*World Almanac* [1965] p. 285). The literacy requirement clearly was not aimed at the numerically few persons of Puerto Rican origin living in New York. Neither the Fourteenth nor the Fifteenth Amendment to the Constitution is violated by the English literacy requirement. *Lassiter v. Northampton County Board of Elections*, *supra* at 51-53; *Camacho v. Rogers*, *supra* at 160.

B.

Appellant's attempts to assign unconstitutionality either to the statute or to its application to her are, without exception, frivolous. For example, the characterization of the literacy requirement as a "grandfather clause" (*Guinn v. United States*, 238 U. S. 347 [1915]) because it applies only to persons who became eligible to vote after January 1, 1922, overlooks the fact that the New York statute omits one crucial element, *viz.*, a grandfather. The defective statute in *Guinn*, which took effect in 1906, exempted from the literacy requirement not only those entitled to vote prior to January 1, 1866 (the date of the first Civil Rights Law) but also their lineal descendants. The clear intent and operation of the statute there were to prevent Negroes from voting. By contrast, the New York literacy requirements applies only to those individuals eligible to vote after its effective date, the point of beginning. *Sperry & Hutchinson v. Rhodes*, 220 U. S. 502, 505 (1911). The statute did not abrogate any right possessed by any citizen qualified to vote prior to the effec-

tive date of the statute. *Ferayoni v. Walter*, 121 Misc. 602, 202 N. Y. Supp. 91 (Sup. Ct., Queens Co. 1923); *Schostag v. Cater*, 151 Cal. 600, 91 Pac. 502 (1907). Indeed, the federal law requiring literacy for naturalization does not apply to persons who, on the effective date of the statute, were over fifty years of age and had resided in the United States for periods totalling at least twenty years. 8 U.S.C. 1423. See also 8 U.S.C. § 1430.

Nor does the fact that New York extends the privilege of absentee registration without regard to race, creed or other classification to inmates and residents of veterans' hospitals whether they be veterans or their spouses, parents and children invalidate the English literacy requirement. As indicated *supra*, pp. 5-6, the literacy requirement is not abolished for such persons except to the extent of any physical disability. Only the nature of the evidence establishing literacy is different in such cases as befits the difference in circumstances. Not every difference in treatment violates the Fourteenth Amendment. *McGowan v. Maryland*, 366 U. S. 420, 425-26 (1960). The legislature is presumed to have investigated the relevant facts behind the distinction (*McGowan v. Maryland*, *supra*; *Bucho Holding Co. v. State Rent Comm'n*, 11 N. Y. 2d 469, 477 [1962]; *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79 [1911]), and their determination "will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, *supra* at 426. Certain differentiations between veterans and civilians have long been deemed proper. See, e.g., 5 U.S.C. §§ 851 ff (preferences to veterans in Government employment); 8 U.S.C. §§ 1439, 1440 (naturalization through service in the armed forces). It is an undeniable fact that Puerto Ricans serve and have served in the armed forces and thus many are "veterans" or "veteran inmates of veteran hospitals" who may be thus differentiated.

The argument that advances in electronic communications have obviated the need for any literacy test is hardly

relevant to the instant case. The *Lassiter* case is very recent and its holding must implicitly reject such an argument. Moreover, the greater part of such communication is in English. While comprehension of the spoken word does not necessarily imply comprehension of the written word, it is more often true that a person who can read and write a language can understand it when spoken. Thus a literacy test is of value even in face of modern technology. Moreover, appellant does not allege that she understands oral English.

Appellant's allegation based on the "privileges and immunities" clause, that she is entitled to vote solely by virtue of her citizenship has no merit. This Court has long and consistently held that the fact of citizenship does not, as a federal constitutional matter, automatically confer the right of suffrage. *Lassiter v. Northampton County Board of Elections*, *supra*; *Breedlove v. Suttles*, 302 U. S. 272 (1937); *Minor v. Happersett*, 88 U. S. [21 Wall. 316 2d (1875)]. Nor does the fact that appellant was eligible to vote in Puerto Rico automatically make her eligible to vote in New York (*Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff'd* 380 U. S. 125 [1965]), since each state may set its own voter qualifications. U. S. Const. Art. I, § 2.

Reliance on the Treaty of Paris of 1898 providing that Congress is to determine the status of inhabitants of Puerto Rico and on the Jones Act of 1917 and subsequent Acts of Congress giving Puerto Ricans full citizenship avails appellant nothing. Her citizenship is not disputed. The fact of citizenship however does not, as we have said, give her an automatic franchise anywhere in the country. Nor does the Constitution of Puerto Rico effect such a result, a result which would be utterly at variance with the federal Constitution. The Court in *Camacho*, *supra*, declared (199 F. Supp. at 158):

"We think it is clear that this provision [in the Treaty of Paris] applies only to the rights of persons born

and *resident of Puerto Rico*, and that they are not given rights which they are entitled to exercise in contravention of the valid laws of a state to which they may move from Puerto Rico. They do not acquire a special status which would give them preferential treatment over a resident of a sister state who moves to New York and seeks to vote from her new residence." (Emphasis supplied.)

Finally, invocation of Article 55 of the United Nations Charter is unavailing. That article is not self executing and is not relevant here (*Camacho v. Rogers, supra* at 158; see also *Sei Fujii v. State*, 242 F. 2d 617 [Cal. 1952]), even assuming that a simple literacy test fairly administered and reasonably related to intelligent implementation of the democratic process is that sort of practice envisioned by the Charter.

C.

Subsequent to the decision of the New York Court of Appeals in the instant case, Congress passed the Voting Rights Act of 1965. Section 4(e) of that Act provides:

"(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant class-room language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant class-room language was other than English,

shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English."

Section 4(e) has been and is in full force and effect in New York City according to an affidavit of appellee Thomas Mallee, Commissioner of the Board of Elections of the City of New York. This affidavit was prepared in connection with the case of *Morgan v. Katzenbach*, presently pending in the District Court for the District of Columbia (Civil No. 1915-65).

Appellant does not allege that she has completed six grades of an accredited Spanish-language school in Puerto Rico. However, she does allege that she has attended schools in Puerto Rico and that she is literate in Spanish. In view of the present applicability of Section 4(e) of the Voting Rights Act of 1965 to New York City, the instant appeal may well be moot. United States Constitution, Article III. It should be noted that the constitutionality of Section 4(e) is presently being tested in two pending actions: *Morgan v. Katzenbach*, *supra* and *United States v. County Board of Election of Monroe County*, W.D.N.Y. Civ. No. 11, 590. In the latter case the intervenor-appellee herein is intervenor-defendant. However, if, as would appear probable from the nature of appellant's allegations, she did in fact attend a Puerto Rican Spanish-language school for six grades, she could have registered and voted in New York City in the 1965 general election, as did thousands similarly situated.

CONCLUSION

Inasmuch as the appeal presents no substantial constitutional question, appellee respectfully prays that the judgment of the New York Court of Appeals be affirmed or that the appeal be dismissed.

Dated: New York, New York, November 12, 1965.

Respectfully submitted,

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APPENDIX A

**IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
60 Civ. 3531**

In the Matter of the Application of

JOSE CAMACHO,

Plaintiff,

v.

NELSON ROOSEVELT, et al.,

Defendants.

**BRIEF FOR THE UNITED STATES
AMICUS CURIAE**

This brief is submitted by the Government to advise the Court concerning the applicability of the Civil Rights Act of 1957 and 1960 to the instant case.

HISTORY OF THE CASE

Plaintiff, a Spanish speaking citizen, born in Puerto Rico and residing in New York City, sought an order from the New York State Supreme Court compelling the election officials in his district to allow him to take a literacy test in the Spanish language, and to register and vote on election day. It was his contention that the New York literacy requirements for voting¹ violated the Four-

¹ The New York Statutes are reproduced in pertinent part in Appendix A.

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teenth and Fifteenth Amendments to the United States Constitution, the Treaty of Paris of 1898, the Charter of the United Nations and certain acts of Congress.

The New York Statutes require that applicants for registration be able to read and write English. New York Const. Art. 2, § 1; N. Y. Election Law §§ 150, 162. Literacy in English is conclusively presumed if the applicant produces a certificate of literacy issued by the Board of Regents, a certificate showing that he has completed the work of an approved eighth grade or higher school in which English is the language of instruction or a certificate of honorable discharge where he was a resident of New York when he joined the armed forces. N. Y. Election Law § 168.

The New York Supreme Court, Special Term upheld the constitutionality of the election law and denied the petition. *Comacho v. Doe*, 140 N.Y.L.J. No. 74, p. 13 (1958). This order was affirmed without opinion by the New York Court of Appeals. 7 N. Y. 2d 762 (1959).² In September, 1960, plaintiff filed suit in this Court requesting both an injunction against various state officials from enforcing the literacy requirement and an order requiring the Attorney General of the United States to take action pursuant to the 1957 Civil Rights Act as amended to allow plaintiff to register to vote. Plaintiff also moved for an order convoking a Three-Judge Court. On October 6, 1960, this Court granted the Attorney General's cross motion to dismiss the complaint insofar as it related to him on the ground that the Court lacked jurisdiction over his person. On June 1, 1961, this Court

² Plaintiff did not, as was his right, take an appeal from this decision to the United States Supreme Court (see 28 U.S.C. § 1257(2)), but seeks, instead, to litigate the same issue in this Court.

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granted an order for a hearing by a Three-Judge District Court. The remaining defendants have moved to dismiss the complaint.

ARGUMENT

A. INTRODUCTORY

The gravamen of the complaint is that plaintiff has been denied the right to vote by operation of the New York literacy requirements and that the New York Statutes contravene the Constitution and the laws of the United States, including the Civil Rights Acts of 1957 and 1960. Plaintiff's attack is leveled at the face of the New York Statute. There is no allegation that the New York law has been administered in an unconstitutional manner or that election officials have been arbitrary or unreasonable in applying the statutory mandate. Nor is it contended that the literacy test is required of certain racial groups but not of others. The sole claim is that it is unreasonable and hence unconstitutional and illegal for the State of New York to deny the vote to one, such as this plaintiff, who is literate in Spanish but is not literate in the English language.

Under our constitutional system, the States have the power to establish standards for the exercise of the franchise. Article I, Section 2 of the Constitution; *Pope v. Williams*, 193 U. S. 621 (1904); *McPherson v. Blacker*, 146 U. S. 1 (1892). Under the Fourteenth and Fifteenth Amendments, these standards must be reasonable and non-discriminatory, particularly with respect to race and color. State standards are also invalid if they contravene any restriction imposed by Congress acting pursuant to its constitutional powers.

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42 U.S.C. 1971(a),³ which was first enacted in 1870, and then reenacted as part of the Civil Rights Act of 1957, provides:

(a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any state or territory, or by or under its authority, to the contrary notwithstanding.

That statute prohibits not only state voting requirements which expressly disfranchise racial groups but it also reaches state requirements and practices which accomplish this result by indirection. *Lane v. Wilson*, 307 U. S. 268 (1939). Assuming that Puerto Ricans constitute a race or color within the meaning of Section 1971, the issue here is whether the New York Statute makes a distinction between them and other citizens of the State of New York.

B. LITERACY TESTS ARE VALID

In view of the recent decision of the Supreme Court in *Lassiter v. Northampton Election Board*, 360 U. S. 45

³ Plaintiff relies generally upon the "Civil Rights Act of 1957 as amended" and asserts that a "practice or pattern" of discrimination exists. Title VI of the Civil Rights Act of 1960 (74 Stat. 90) does refer to a pattern or practice of discrimination but only in the context of what remedy is available for violations of the 1957 Act. The 1960 statute does not create causes of action. Likewise, the new features of the 1957 statute are concerned solely with remedies. They establish a remedy available to the Attorney General, not to private parties. As indicated, *supra*, however, Section 1971(a) of Title 42, which was reenacted in 1957, does create a right which may be vindicated not only by the United States, but also by a private plaintiff.

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(1959), it can no longer be contended that a state may not constitutionally require literacy as a prerequisite to the exercise of the franchise. In that case, a Negro citizen of North Carolina sued to void that State's requirement that "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." The Court, after reviewing the history and scope of literacy requirements in the American States, addressed itself squarely to the issue of the reasonableness of such requirements in relation to the State's power to determine the qualifications of its voters. Said the Court (360 U. S. at 51-53):

The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. . . . It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. . . . North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

Thus, whatever question there might have been prior to 1959 concerning the validity of literacy requirements, it was laid at rest by *Lassiter*. This Court is bound by the *Lassiter* decision.

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C. ENGLISH LITERACY

But plaintiff contends that, whatever may be the rule with respect to literacy generally, it is unreasonably discriminatory to require literacy to be restricted to proficiency in the English language. In his view, the objectives of a literacy requirement would be satisfied by literacy in any language, or, at a minimum, by literacy in a language, such as Spanish, which is spoken and read by thousands of persons in the State of New York.

First, it would seem that this issue, too, is foreclosed by *Lassiter*. As indicated above, the North Carolina statute which was involved in the *Lassiter* case required literacy in the English language. As the Court's discussion of the literacy tests of other states shows, it was well aware of the difference between the New York Statute and those of other states in that regard.* While the Court did not specifically discuss the English language requirement of the North Carolina test, it did approve that test and did not in any way cast doubt or express reservations upon the exclusion, by North Carolina, of literates in other tongues.

Second, in any event, it cannot be said that the New York requirement which distinguishes between English and non-English speaking people is so unreasonable as to contravene the Constitution and the Civil Rights Act of 1957.

* The Court referred specifically to the fact that two states (including New York) require that the voter be able to read and write English. 360 U. S. at 52, note 7. The Court also mentions a Louisiana requirement that to qualify, the applicant has to read and write "English or his mother tongue;" a Washington requirement that the voter be able to read and speak the "English language;" and more general requirements in other states which do not insist upon literacy in English.

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One reasonable method for insuring an informed electorate is a country where English is, by far the dominant language, is to require that voters be able to read and write English. An informed electorate must have access to the myriad of conflicting viewpoints which contribute to the making of political decisions. In a country and state where the predominant and official language is English, it is reasonable to suppose that these views are more fully accessible to those who understand the English language.

To be sure, Spanish language newspapers are published in New York City and are available to residents of the City and environs, but, at best, one wholly dependent upon such sources, however excellent they may be, is denied access to the great and varied body of the American press. In addition, the Court in considering this case must view the State of New York as a whole. Large areas of the State are not served by Spanish-language newspapers. Residents of these areas who are literate only in Spanish do not have available sufficient sources of information to permit them to qualify as informed electors.

This case does not involve an interplay between discrimination in educational opportunity on the one hand and a literacy test as a prerequisite to voting on the other, for in New York educational facilities of very great scope and variety are available to all citizens, regardless of race or color. Nor does it involve a tightening of literacy standards after one racial group has achieved electoral dominance. Either of these situations may well call for elimination of the literacy requirements as unreasonable and discriminatory. Here, we are dealing with a statutory provision having no racial basis.

It must be remembered that this Court is not called upon to pass judgment upon the wisdom of the statute which is here at issue. It may well be that it is more desirable,

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in a political democracy, that the franchise be available to as large a proportion of the population as possible, and that those Puerto-Rican-Americans, who are unable to read English, should not be disfranchised on that account. But those considerations are for the legislature and the people of New York. Under *Lassiter*, the Court's task is at an end when it has determined that, within the range of discretion available to it, the legislature of the state has made a choice which is not constitutionally unreasonable. Under the complaint here, there is no showing of an unconstitutional choice.

D. PURPOSE AND APPLICATION

No matter what might be the reasonableness of the statute on its face, if its purpose is to discriminate on account of race (*Davis v. Schnell*, 81 F. Supp. 872 (M. D. Ala. 1949), affirmed, 336 U. S. 933) or if it is administered in a discriminatory manner, it cannot stand.

The New York literacy requirement was enacted in 1922. At that time there were only 7,719 Puerto Rican-born citizens in New York (see Appendix B) compared with 191,305 in 1950 and an estimated 618,000 in 1959. See Report of the United States Commission on Civil Rights 1959, p. 67. The literacy requirement clearly was not aimed at Puerto Rican-Americans.

Plaintiff does not allege that the statute is administered in an arbitrary or discriminatory manner. In fact, New York provides as objective a method of testing literacy as has yet been devised. Anyone with an eighth grade certificate from a school in which English is the language of instruction or who has an honorable discharge where he was a resident of New York when he joined the service is automatically qualified. Others are given tests, not by election officials, but by the Board of Regents whose

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certificate is binding upon the election inspectors. New York Election Law § 168.

The operation of the New York literacy requirement has been authoritatively described as follows:^a

New York is the only state in the Union that both has a reasonable reading requirement and administers it in a manner that secures uniformity of application throughout the State and precludes discrimination, so far as is humanly possible.

.

The examination is based upon prose compositions of about ten lines each, prepared by the personnel of the State Department of Education, designed to be of the level of reading in the sixth grade, on topics of civics, history, geography, natural science or biography.^a These are uniform for any single examination throughout the State. The examination is given by school authorities and graded by school superintendents or teachers under careful instructions from the central authority, to secure uniformity of grading as nearly as is possible. On a form handed a person taking the examination the eight to ten line composition is printed, followed by eight questions, with blanks for answers. The questions call for short answers which can easily be given by anyone able to read the composition understandably. No additional information is necessary. There is no insistence upon good English in the answers, errors of spelling and of grammar being overlooked.

.

^a McGovney, *The American Suffrage Medley* (1949) 62-64.

^a Attachment C is a sample literacy test represented by McGovney as being one of the tests in use in 1943. McGovney, *supra*, p. 65.

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[These literacy certificates] are issued by school authorities and must be accepted without question by registrars of voters. Thus, the possibility of discrimination by registrars, who usually are petty officeholders or their deputies, is avoided. In this, as well as other respects, the New York system differs from that of any other literacy-test state.

Dated: New York, N. Y., June 12, 1961.

Respectfully submitted,

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APPENDIX A TO A
NEW YORK ELECTION LAWS
N. Y. Const. Art. 2 § 1

N. Y. Election Law, § 150 N. Y. Election Law, § 168 omitted.

APPENDIX B TO A

1950 UNITED STATES CENSUS OF POPULATION

Special Report P-E No. 30

"PUERTO RICANS IN CONTINENTAL UNITED STATES"

Table A.—PUERTO RICANS IN CONTINENTAL UNITED STATES,
NEW YORK STATE, AND NEW YORK CITY: 1910 TO 1950

(Statistics for 1950 based on 20-percent sample)

<i>Census year and generation</i>	<i>Continental United States</i>		<i>New York State</i>		<i>New York City</i>	
	<i>Number</i>	<i>Percent of increase</i>	<i>Number</i>	<i>Percent of total</i>	<i>Number</i>	<i>Percent of total</i>
Puerto Rican						
Birth:						
1950	226,110	223.2	191,305	84.6	187,420	82.9
1940	69,967	32.6	63,281	90.4	61,463	87.8
1930	52,774	346.8	45,973	87.1	"	...
1920	11,811	680.6	7,719	65.4	7,364	62.4
1910	1,513	...	641	42.4	554	36.6
Puerto Rican						
percentage:¹						
1950	75,265	...	"	...	58,460	77.7

¹ Born in continental United States.² Not available.

APPENDIX C TO A

1943—Test 1

NEW YORK STATE REGENTS LITERACY TEST
(To be filled in by the candidate in ink)

Write your name here
First name Middle initial Last name

Write your address here

Write the date here
Month Day Year

Read this and then write the answers to the questions
Read it as many times as you need to

The legislative branch of the National Government is called the Congress of the United States. Congress makes the laws of the Nation. Congress is composed of two houses. The upper house is called the Senate and its members are called Senators. There are 96 Senators in the upper house, two from each State. Each United States Senator is elected for a term of six years. The lower house of Congress is known as the House of Representatives. The number of Representatives from each state is determined by the population of that state. At present there are 435 members of the House of Representatives. Each Representative is elected for a term of two years. Congress meets in the Capitol at Washington.

Appendix C to A.

The answers to the following questions are to be taken from the above paragraph

- 1 How many houses are there in Congress?
- 2 What does Congress do?
- 3 What is the lower house of Congress called?
- 4 How many members are there in the lower house?
- 5 How long is the term of office of a United States Senator?
- 6 How many Senators are there from each state?
- 7 For how long a period are members of the House of Representatives elected?
- 8 In what city does Congress meet?

NOV 3 0 1965

JOHN F. DAVIS, CL

Supreme Court of the United States

October Term, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

**JAMES M. POWER, THOMAS MALLEE, MAURICE
J. O'ROURKE and JOHN R. CREWS, Members of and
constituting the Board of Elections of the City of New
York,**

Appellees,

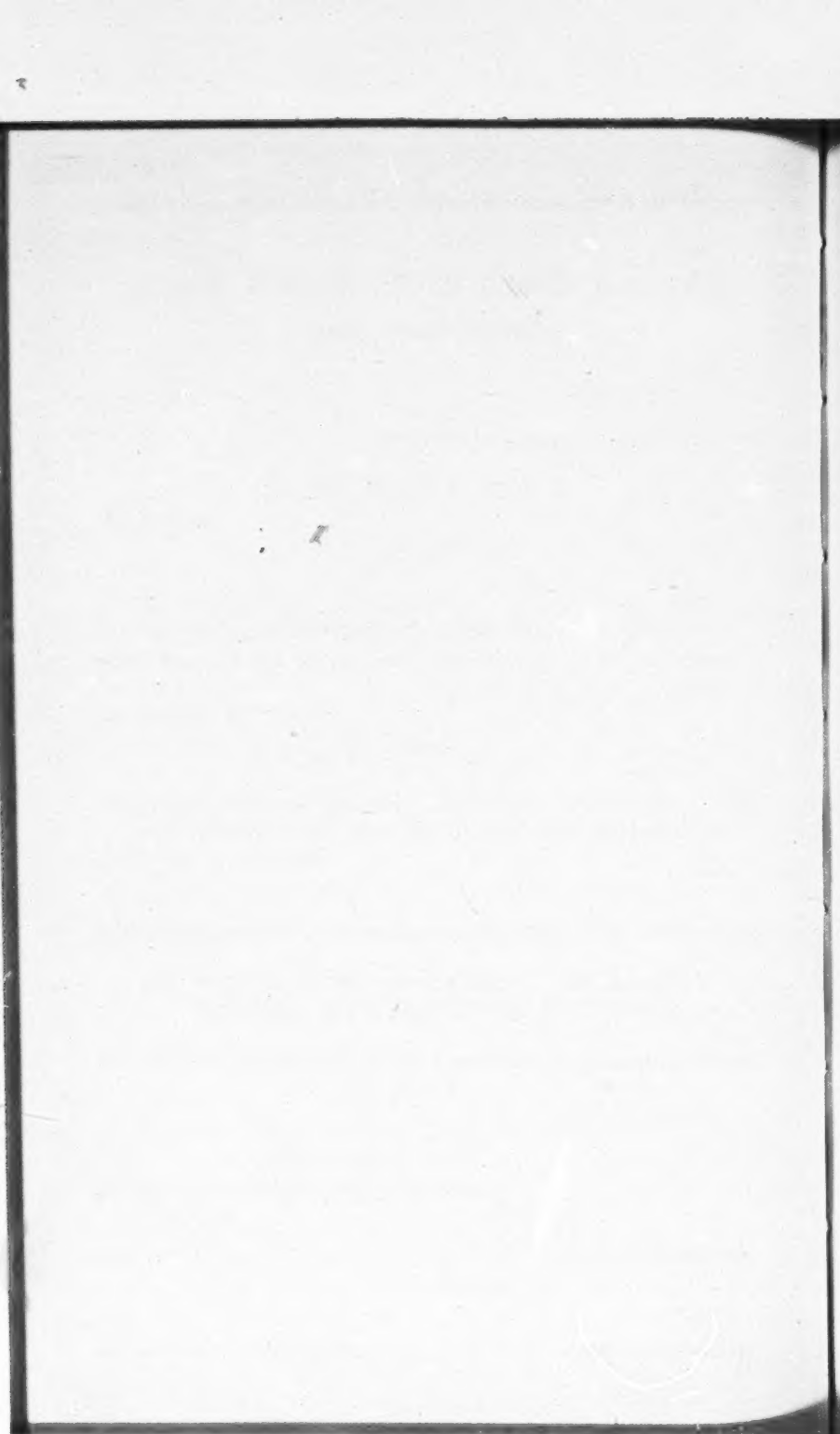
and

**LOUIS H. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of the Executive Law,
*Intervenor-Appellee.***

**APPELLANT'S BRIEF IN OPPOSITION TO
MOTION TO DISMISS OR AFFIRM**

PAUL O'DWYER,
Attorney for Petitioner-Appellant.

W. BERNARD RICHLAND,
of Counsel.



Supreme Court of the United States

October Term, 1965

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APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

In this appeal which presents grave constitutional questions affecting the voting rights of hundreds of thousands of New York citizens and upon the resolution of which questions the New York Court of Appeals is sharply divided, intervenor-appellee, the New York Attorney General, has moved to dismiss or affirm upon the assertion that the matter is unworthy of review by this Court.

Apparently uninfluenced by any need for consistency, the New York Attorney General contends on the one hand that New York's literacy-in-English laws are valid and live on the other hand urges that the question presented "may very well be moot" because section 4(e) of the Voting Rights Act of 1965 applies to appellant and renders the New York literacy-in-English laws void as to her.

We shall demonstrate in this brief that the New York Attorney General is wrong upon both counts.

1.

In the face of the rapidly developing state of the law, pointing clearly to the destruction of barriers to the extension of voting rights to all citizens, the New York State Attorney General moves to dismiss or affirm this appeal upon the basis of the arid doctrine of *stare decisis*. The brief which he has submitted here provides a contrast to the policy of our Nation recently expressed by the President.

The President's historic March 15, 1965 Address to Congress states our National purpose and puts this appeal in proper perspective:

"Those words are a promise to every citizen that he shall share in the dignity of man. This dignity cannot be found in a man's possessions. It cannot be found in his power or in his position. It really rests on his right *to be treated as a man equal in opportunity to all others*.

It says that he shall share in freedom. He shall *choose his leaders*, educate his children, provide for his family according to his ability and his merits as a human being.

To apply any other test, to deny a man his hopes because of his color or *race* or his religion or *the place of his birth* is not only to do injustice, it is to deny America and to dishonor the dead who gave their lives for American freedom.

Our fathers believed that if this noble view of the rights of man was to flourish it must be rooted in democracy. *The most basic right of all was the right to choose your own leaders*.

The history of this country in large measure is the history of expansion of that right to all of our people. Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument: *every American citizen must have an equal right to vote*.

There is no reason which can excuse the denial of that right."

Can there be any doubt that it is Appellant's "race" and the "place of [her] birth" which has resulted here in the denial of her right to "share in the dignity of man", to be "treated . . . equally in opportunity to all others", to join with other citizens in the exercise of "the most basic right of all"—"the right to choose [her] leaders", to "share in freedom", and, as "every American citizen, [to] have an equal right to vote"? The question need only be asked to be answered.

2.

The position taken by the New York State Attorney General is founded upon what we must submit is the arrogant notion that English is the *only* American language. Such a notion ignores our Nation's history and is at variance with our National policy. Puerto Rico is as much a part of the territory of the United States as is Wisconsin; Americans born in Puerto Rico are as much native-born American citizens as are Americans born in Indiana. The native language of Puerto Rico—Spanish—is an attribute of the Puerto Rican's race, culture and place of birth in America. To deny to American-born citizens of Puerto Rican origin the "most basic right of all"—the right to vote in elections—solely because, although literate in their own native-American language, they are not literate in the language of other American natives, is, in effect, to condition their right to vote upon their attainment of the culture, race and language of those born in an English-speaking part of the territory of the United States, and to deny them that "exact equality with citizens from the American homeland" to which this Court has held them to be entitled. *Balzac v. Porto Rico* 258 U. S. 298, 311.

3.

We have demonstrated in the Jurisdictional Statement submitted to this Court, and the Chief Judge and two of the Judges of the New York Court of Appeals found, that the pattern of laws in New York governing lit-

eracy requirements shows their irrational nature and demonstrates that they have no proper relation to Constitutional voting qualifications. We have shown that the New York Constitution itself establishes exceptions to the literacy test and that the statutes go further and carve out numerous other exceptions, all of which permit persons totally illiterate in *any* language to vote while at the same time denying to petitioner and all other similarly situated literate American-born citizens the right to vote. We have shown moreover that literacy in the English language is not a requisite for the attainment of understanding of political issues and political candidates. We have shown that literacy in the Spanish language is just as effective an accomplishment in this regard. The New York State Attorney General's only answer to this seems to be the flat assertion that pre-1921 illiterates, Armed Forces-veterans illiterates, illiterate relatives of Armed Forces-veterans and persons illiterate by virtue of physical disability are appropriate exceptions to the literacy test requirements, but appellant, literate in Spanish, is not. It is submitted that this assertion finds no support in logic or reason.

4.

We demonstrated in our Jurisdictional Statement (pp. 10-11) that New York's literacy laws irrationally and therefore unconstitutionally discriminate among selected groups of citizens and apply literacy requirements to some and exempt others. We showed that in the classes of thus selected groups *exempt* from the requirement are:

1. Pre-1921 illiterates;
2. Physically disabled illiterates;
3. Honorably discharged veterans;
4. Armed Forces veteran-inmates in Veterans Hospitals;

5. Spouses, parents and children of veterans, whether living or dead, in veterans hospitals; and

6. Spouses, parents and children of the class covered by 5. above, if they are "with such inmates".

Intervenor-appellee New York Attorney General attempts to conjure these circumstances out of existence by the bland, unsupported assertion (Brief, pp. 5-6, 9) that the exemptions are appropriate classifications but fails to suggest the existence of any basis for such classification related to the exercise of the elective franchise; and indeed, as we demonstrated in our Jurisdictional Statement (pp. 10, 11, 12, 15), there is none. He then goes further and, with an appearance of seriousness, suggests that a "conclusive presumption" of literacy in instances 3 to 6 above does not constitute an exemption from the literacy test. It is submitted that we need only state the New York Attorney General's assertion to disprove its validity. See *Wigmore on Evidence* (3 Ed) § 2492.

At the same time that he is asserting the absolute validity of New York State's literacy-in-English requirement, the New York Attorney General also asserts (Br. pp. 11-12) that § 4(e) of the Voting Rights Act of 1965 which exempts from the literacy-in-English requirement of New York law persons educated to the Sixth grade in another language in an American school in Puerto Rico "is in full force and effect" in New York. He then goes on to suggest (Br. p. 12) that therefore the very grave questions presented by this appeal "may very well be moot". This suggestion is without foundation. In the first place, § 4(e) of the Voting Rights Act of 1965 is not "in full force and effect" in New York; it has recently been struck down by a three-Judge Court (*Morgan v. Katzenback*, D.C. D. of C. Civ. No. 1915/65, opinion dated November 15, 1965), in a suit in which the New York Attorney General joined in challenging the validity of § 4(e). In

the second place, there is nothing in the record before this Court to indicate that appellees have relented in their refusal to qualify appellant as a voter—as indeed they have not. Thirdly, there is nothing in the record before this Court to indicate that appellant *could* qualify under § 4(e) Voting Rights Act of 1965. Finally, if the New York Attorney General were correct in his unsupported assumption that appellant is entitled to be registered as a voter, then she is entitled to a reversal by this Court. Nor need we stop there: Appellant is here challenging the entire pattern of the New York State literacy-test laws and asks this Court to strike them down in their entirety. Far from this appeal being “moot” it is both live and significant and the New York Attorney General should not be permitted to avoid a review by this Court of the 4 to 3 decision of the New York State Court of Appeals by the transparent device of suggesting, without actually asserting, that this appeal is moot.

5.

Finally, intervenor-appellee the New York Attorney General in an attempt to find support for his position, appends to his brief a 1961 brief of the U. S. Attorney for the Southern District of New York in which a position was taken which contrasts with the position of the Attorney General of the United States as set forth in his extensive brief in the recently decided *Morgan v. Katzenbach*, discussed above. *Lassiter v. Northampton*, 360 U. S. 45, the principal authority upon which intervenor-appellee relies (Br. pp. 3, 6, 7, 8, 10) is inapplicable here. In the first place *Lassiter* lends no support to the denial of voting rights of a citizen literate in the American language of his American place of birth. In the second place, *Lassiter* is surely no authority for the highly irrational distinctions made in New York's literacy laws between various classes of citizens related in not the slightest degree to their qualification to participate in their government.

Conclusion

This appeal provides an occasion for the recognition that no provision of law which hampers or impedes the exercise of the most basic right of all Americans—the right to be an elector—can or should be allowed to stand. For, as the President said in his address to Congress “It is wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country.”

It is submitted that the disqualification of the perfectly-literate appellant, solely upon the ground that the American language in which she is literate is not the language New York State would choose its voters to be literate in, is at variance with our National purpose; constitutes an invalid burden upon Americans of Puerto Rican birth; denies petitioner and all others similarly situated the equality to which they are entitled under the United States Constitution; and violates the solemn undertaking made by the United States under the Jones Act, under the Treaty of Paris, under the United Nations Charter and under the specific commitment made by the United States to the United Nations in 1953; all of which is more fully set forth in our Jurisdictional Statement and need not be repeated here.

It is submitted that neither the assertion of *stare decisis* founded upon case law which has, over the past six years of fast development, become outmoded, nor adherence to doctrines inimical to the National purpose expressed by our President so recently and against the background of compelling events, should be permitted to stand in the way of review by this Court of the very significant questions upon which the Judges of the New York Court of

Appeals divided sharply and which we have discussed
in the Jurisdictional Statement presented to this Court.

The motion to dismiss or affirm should be denied.

November 23, 1965.

Respectfully submitted,

PAUL O'DWYER,
Attorney for Appellant.

W. BERNARD RICHLAND,
of Counsel

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JOHN F. DAVIS, CLERK

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**ON APPEAL FROM THE COURT OF APPEALS
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APPELLANT'S BRIEF

PAUL O'DWYER,
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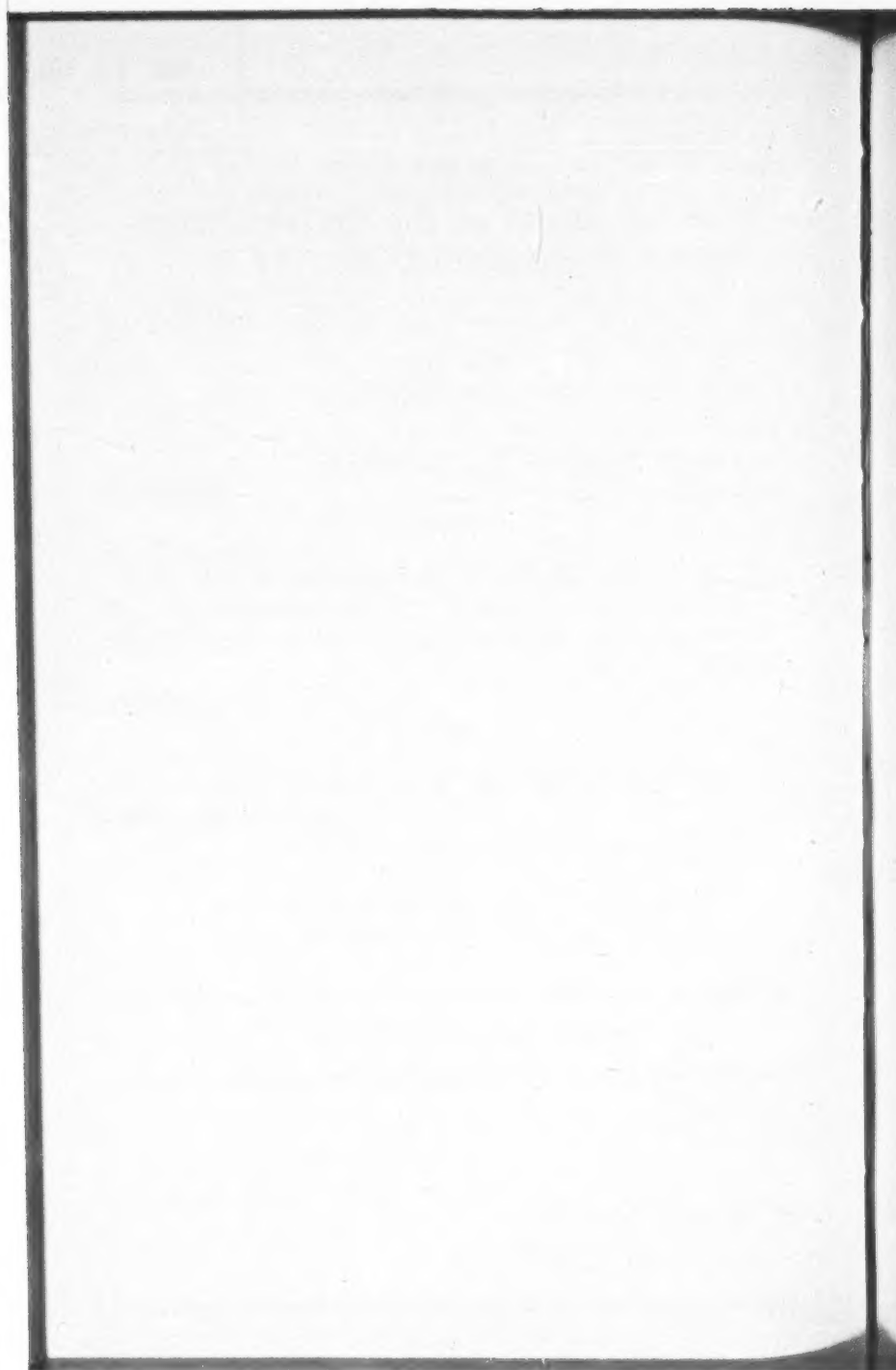


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and

LOUIS J. LEFKOWITZ, as Attorney General,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

APPELLANT'S BRIEF

Appellant appeals from a final judgment of the New York State Court of Appeals (3 of the 7 Judges dissenting) made and entered May 27, 1965, amended June 19, 1965 and further amended July 9, 1965.

Opinions Below

The majority memorandum decision and the minority opinion in the New York State Court of Appeals are reported in 16 N. Y. 2d 639 (R. 40-41). The decisions amend-

ing the remittiturs of the Court of Appeals and setting forth the Constitutional questions raised and passed upon by that Court are reported in 16 N. Y. 2d 708 and 827 (R. 42-47).

The memorandum decision of the New York Supreme Court, Special Term Part I is reported in March 17, 1964, New York Law Journal (R. 37-38).

Jurisdiction

This action was brought in the New York State Supreme Court, New York County, to challenge the validity of a series of New York laws under which the right of certain selected classes of citizens to vote in elections is conditioned upon their ability to read and write in the English language.

The judgment of the New York State Court of Appeals was made and entered as above noted. The jurisdiction of the United States Supreme Court to review this judgment by direct appeal is provided for by Title 28, § 1257 (2) of the United States Code.

Probable jurisdiction was noted by order of this Court dated January 24, 1966 (R. 52).

New York Law Involved

New York State Constitution, Article II, § 1 (Appendix, p. 1a).

New York State Election Law, Sections 150, 155, 168 and 201 (Appendix, pp. 1a-8a).

Questions Presented

The questions presented by this appeal are:

1. Whether a native-born United States citizen, literate in the native language of the part of the United States in

which she was born and educated can properly be deprived of her right as a citizen to vote in elections solely because she cannot read or write in English, a language which is to her foreign.

2. Whether the provisions of Article II Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law of the State of New York, as applied to appellant infringe her rights under the 5th, 14th and 15th amendments to the Constitution of the United States, in that such provisions of New York Law unreasonably discriminate between classes of citizens, in that such provisions exempt from all literacy requirements persons who could have qualified to vote although illiterate prior to 1922, in that such provisions exempt from their application entirely persons unable to read and write English because of physical defects, and in that said provisions exempt from all literacy requirements veterans of the Armed Forces, and occupants of veterans' hospitals regardless of whether or not they themselves are veterans, while at the same time denying the right to vote to persons literate in the Spanish language, a language native to the part of the United States in which they were born and in whose United States government schools they were educated.

3. Whether the literacy-in-English provisions of Article II Section 1 of the New York State Constitution, and Sections 150, 155, 168 and 201 of the New York State Election Law as applied to appellant constitute violations of Article IV Sections 2 and 4 and Article VI Section 2 of the Constitution of the United States in that such provisions of New York Law unreasonably and unconstitutionally discriminate against native born citizens of the United States of Puerto Rican birth and deny them rights equal to those accorded to native born citizens of other parts of the United States and in that such provisions violate the United Nations Charter, ratified as a Treaty on August 8,

1945, and the express commitment of the United States to the United Nations in 1953, pursuant to such United Nations Charter.

Statement of the Case

These are the circumstances, as alleged in the Petition, out of which this proceeding arose:

Martha Cardona, the Appellant, is a native-born citizen of the United States. She was born in Puerto Rico then, as now, a part of the United States, whose common language is Spanish (R. 2). She was educated in Puerto Rico in schools supported by the United States Government. The curriculum in those schools is substantially identical to those in other parts of the United States, and the text books used are identical to those in common use in other parts of our country, the only substantial difference arising out of the fact that the lessons and the texts are in the language in common use in the areas involved. In Appellant's case the language used was that common in Puerto Rico—Spanish (R. 3). Since 1948, Appellant has been a resident of New York City. She is married and has three children, all of whom were born in New York City. She is literate in her native language, Spanish. She does not read and write English. She has a general understanding of government and politics, at least equal to that of adult citizens, residents and voters of New York. She is interested in her government and desires to play the proper citizen's role in her government (R. 3). Before taking up residence in New York City, Appellant lived in Puerto Rico where she regularly voted in Gubernatorial, legislative and municipal elections, pursuant to the provisions of 48 U. S. Code, Ch. 4 (R. 3). Appellant is a regular reader of the New York City Spanish-language daily newspapers and periodicals and a regular listener to the broadcasts of the Spanish-language radio stations in New York City, each of which media of communication provide as much or more coverage of government and politics as do most English papers and radio stations (R. 3).

On July 23, 1963, Appellant appeared at the New York City Board of Elections, and asked to be registered and enrolled as a voter, that she presented evidence of her citizenship, age and residence, none of which was questioned or disputed; that the Board of Elections required that Appellant submit to a literacy test in the English language; that Petitioner informed the Board that she was unable to pass such a test in the English language, and requested that she be given a literacy test in her native language; that this the Board of Elections refused to do and rejected Appellant's request for enrollment as a voter upon the sole and exclusive ground that she was unable to pass a literacy test in English a language which to her is foreign (R. 3-4).

The sole basis upon which the Board of Elections rejected Appellant's demand that she be enrolled as a voter is the provisions of Article II, Sec. 1 of the New York Constitution (and the provisions of Sections 150, 162 and 201 of the Election Law, which purportedly carry out the cited provision of the Constitution) which, in part, provides that "after January 1, 1922 no person shall become entitled to vote * * * unless such person is also able, except for physical disability, to write and read English" (R. 4).

Appellees, the New York City Board of Elections, in its Answer did not oppose the granting of the relief demanded by petitioner, but (R. 13-14) expressly left that task to the New York State Attorney General, who intervened and served an Answer asserting objections in point of law (R. 15-18).

Appellant challenged the validity of the cited provisions of the New York Constitution and Election Law, particularly insofar as they purport to apply to United States citizens of Puerto Rican birth, literate in the language of Puerto Rico, and not literate in the English language (R. 4).

Briefly stated, the principal grounds upon which Appellant asserts the unconstitutionality of the English-literacy test provisions of the New York State Constitution and the provisions of the Election Law which purport to carry them out are (R. 4-12).

1. The constitutional and statutory provisions contain a "grandfather clause" exception in favor of qualified citizens as of the effective date of the adoption of the constitutional provision and of certain other classes which, by unreasonably discriminating against others, infects the entire provision.

2. The statutory and constitutional provisions contain exceptions in regard to veterans and veterans' dependents and dependents of veterans' dependents and the spouses, parents and children of deceased veterans which by unreasonably discriminating against others, infects the entire pattern of literacy requirements.

3. The literacy-test provisions are unrelated, either in purpose or effect, to determining the ability of citizens competently to exercise the elective franchise and are designed *not* to assure qualification to vote but disqualification.

4. By depriving of their franchise United States born citizens fully literate in the language native to the part of the United States in which they were born, upon the sole ground that they are not literate in the language native to another part of the United States, such English-literacy test provisions deprive those citizens of the equal protection, the rights, privileges and immunities guaranteed to all citizens of the United States and defeat the principal of reciprocal rights and immunities which lies at the base of those guarantees.

5. The English-literacy test requirements insofar as they preclude Puerto Rican-born United States citizens

from exercising their franchise constitute an unlawful discrimination based upon race.

6. The English-literacy test requirements insofar as they are applied to Puerto Rican-born citizens, violate the Treaty of Paris and violate United States Statutes which carry out that Treaty, and are in conflict with the Congress-enacted Constitution of Puerto Rico which forbids the application of literacy tests to Puerto Rico-born citizens.

7. The English-literacy test requirements are in direct conflict with the formal commitment made by the United States to the United Nations in regard to the political rights of Puerto Rico-born United States citizens.

The factual basis upon which these grounds are asserted are set forth in detail in the petition (R. 4-12).

Since the dismissal of the petition was on the law alone, the complete accuracy of the factual allegations must be assumed for the purpose of this appeal.

The New York Supreme Court at Special Term, denied petitioner's application and dismissed the petition as a matter of law, with a short opinion, citing a prior decision of New York Courts in *Camacho v. Rogers*, 7 N. Y. 2d 762 and a decision by a three-judge Court in *Camacho v. Rogers*, 199 F. Supp. 155 (R. 37-38).

The Court of Appeals of New York, to which a direct appeal was taken pursuant to N. Y. C.P.L.R. 5601 (b) 2, affirmed, three of the seven Judges dissenting. The majority decision was expressed in a brief memorandum which merely referred to that Court's decision without opinion in *Camacho v. Rogers*, 7 N. Y. 2d 762 (R. 40).

Chief Judge Desmond wrote a dissenting opinion in which he was jointed by Judges Fuld and Burke. That opinion stated, in part (R. 41; 16 N. Y. 2d 708, 710):

“Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State’s literacy-in-English requirements, is unreasonable and unconstitutionally discriminatory, particularly since by reason of the effective date of the literacy amendment to section 1 of article II of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy.”

Summary of Argument

The New York constitutional and statutory provisions imposing a literacy-in-English qualification as a condition for the exercise of the elective franchise unconstitutionally discriminates against native-born United States citizens of Puerto Rican birth, in that they effectively deprive them of a basic right of citizenship upon the basis of circumstances which inhere in them by reason of their place of birth upon American soil. Spanish is just as American a language as is English, and to require of an American citizen that he read and write English, although he is born and educated in a part of America in which Spanish is the native language is no more valid than it would be to require of a native born American citizen that he read and write Spanish although the place of his birth and education was one in which English was the common language.

But, entirely apart from this, the pattern of the literacy-in-English of laws of New York is shot through with exceptions, under which pre-1922 citizens resident in New York, disabled citizens, armed forces veterans, relatives of armed forces veterans confined to veterans’ hospitals and other institutions and such persons who are “with them” are exempted from all literacy requirements while at the same time persons fully literate in a language other than English who do not come within that variety of cate-

gories are required to demonstrate an ability to read and write in English as a prerequisite for the exercise by them of the elective franchise. This too works a clearly unconstitutional discrimination which infects the entire pattern of the literacy-in-English laws of New York and renders them unconstitutional. Moreover, the pattern of literacy-in-English laws of New York State is offensive to the whole concept of national citizenship and, in addition, insofar as it applies to United States born citizens of Puerto Rican birth, violates both the United Nations Charter and the express commitment of the United States Government in regard to the status of Puerto Rican-born United States citizens made to the United Nations for the purpose of exempting it from certain requirements of the United Nations in regard to control, inspection and reporting applicable to colonial possessions, and for that reason too is unconstitutional.

POINT I

The exemption from literacy test requirements of pre-1922 citizens, physically disabled citizens and a host of other classes of citizens on bases utterly unrelated to voter qualification infects the whole pattern of New York's literacy-in-English laws and renders them totally invalid.

In *Carrington v. Rash*, 85 S. Ct. 775 (1965) this Court (one of the Justices dissenting) struck down as invalid under the 14th Amendment a provision of the Texas Constitution which denied the elective franchise to residents of Texas who became such while on military duty, so long as they remained members of the armed forces. This Court held that this discriminatory provision established a classification bearing no rational or valid relation to the proper exercise of voting rights.

The entire pattern of New York's literacy-in-English laws, as we shall now demonstrate, is such as to by comparison make the invalidated Texas Constitutional provision a model of rationality and discretion: for the New York literacy-in-English laws establish a barrier to the exercise of the elective franchise in selective cases and, in a series of other selective cases, provide exemptions from those provisions based upon no rational differentiation having the slightest connection with the proper exercise of the elective franchise.

Under New York law, while citizens literate in the native language of the part of the United States in which they were born are denied the right to vote, the following classes of persons, although they be totally illiterate in any language, are exempt from all literacy requirements:

- 1) Pre-1922 New York citizens;
- 2) Physically disabled persons;
- 3) Honorably discharged veterans;
- 4) Armed Forces veteran inmates in veterans hospitals;
- 5) Spouses, parents and children of veterans (whether living or dead) in veterans hospitals; and
- 6) Spouses, parents and children of the class covered by "5" above, if they are "with such inmates".

This, as Chief Judge Desmond of the New York Court of Appeals (Burke and Fuld, JJ, concurring) aptly observed in the dissenting opinion below (R. 41):

"... is unreasonable and unconstitutionally discriminatory."

It is submitted that the *Carrington* decision applies *a fortiori* here. And, since the pattern of New York's

literacy laws is shot through with discrimination, it must fall in its entirety.

We turn now to a detailed examination of New York's literacy laws.

A

The operative provision of the New York Constitution (Art. II, § 1; App., p. 1a) limits the requirements of literacy to citizens who reach the stage at which they become qualified to vote "after January 1, 1922," and, in addition, exempts from the literacy requirements persons whose illiteracy stems from "physical" disability. Thus, a person totally illiterate is permitted to register and vote if he was a citizen and resident of New York State prior to January 1, 1922, even though such persons have never before voted in an election (see *Matter of Ferayorni v. Walter*, 202 N. Y. S. 91, 121 Misc. 602 and New York Election Law §169). Thus, the constitutional provision referred to is infected by an invalid "grandfather clause" which effects an unwarranted discrimination against non-literate persons who achieved ordinary voting status after January 1, 1922.

The purpose of the exemption provision is plain; it was to assure the continuance of voting rights to native-born New Yorkers and other then-qualified residents regardless of whether or not they were literate and to deny voting rights to later-arriving New York residents and to persons later-obtaining American citizenship. Under the exemption an illiterate native-born New Yorker, of voting age in 1921, who had never voted before, would be allowed to vote, but a similarly situated United States-born citizen migrating to New York from Alabama or Mississippi after January 1, 1922 would not be allowed to vote, and neither would a native-born United States citizen migrating from Puerto Rico, after January 1, 1922, even though literate in the language of his place of birth, or a United States citizen, literate in the language of his place of birth, naturalized after January 1, 1922. There is obviously no rational

basis for such discrimination. A citizen who had that status in January, 1922 is obviously no more competent to play a full citizenship role than a citizen who achieved that status in 1942 or 1962. Yet, under the cited provisions of the Constitution, a totally illiterate person who had reached the age of 21 before January 1, 1922 is permitted to vote, while his neighbor, who is fully literate in half a dozen languages other than English is denied the right to vote, merely because he was not 21 years old, citizen and resident of New York on January 1, 1922. Such a distinction is irrational and unsupportable as a matter of law.

Grandfather clauses, indistinguishable in principle from the one here under review have been repeatedly struck down by this Court. See, *e.g.* *Guinn v. U. S.*, 238 U. S. 347; *Lassiter v. Northampton Election Board*, 360 U. S. 45. See also, *Lassiter v. Taylor*, 152 F. Supp. 295.

The provisions of law embodying the literacy test are manifestly not related to determining the ability of a citizen to exercise the elective franchise, neither in their purpose nor in their effect. As recent extensive United States Senate Hearings have shown (*Literacy Tests and Voter Requirements in Federal and State Elections*, Hearings before Subcommittee on Constitutional Rights of Judiciary Committee, 87th Congress, 2nd Session I 1962), the history of these provisions and provisions similar to them in the laws of other States, reveals that their purpose is to exclude certain groups of citizens from taking part in elections and to reduce them to a second-class status. The terms of the provisions referred to show that, in their effect, they make irrational distinctions between citizens of differing racial background and serve not to assure qualification to vote but disqualification. Such, too, is the history of New York's literacy laws. See *Debate on the Literacy Test*, N. Y. Times, Section 7, p. 2, Oct. 23, 1921; 3 Rev. Rec. N. Y. State Constitutional Convention 1915, pp. 3021-3055.

B

The irrational, discriminatory and totally invalid character of New York's literacy requirement is further revealed by numerous exceptions which have been carved out, in addition to those discussed above.

Section 150 of the New York State Election Law (App., pp. 1a-2a) prescribes the qualifications which a voter must possess. It provides, among other matters:

"In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English."

The literacy-in-English provision thus starts out with two exceptions: (1) Pre-1922 illiterates, and (2) persons suffering from a physical disability (App., p. 1a); both of which factors are totally unrelated to the proper qualification of citizens to intelligently exercise the elective franchise. But the discrimination does not stop there. By other sections of the Election Law the literacy provisions are rendered inapplicable to a host of other persons: Thus § 168 of the Election Law (App., pp. 5a-7a) which purports to prescribe the means by which "proof of literacy" is to be established, provides, for example, that (subd. 6) "[p]resentation of a certificate of an honorable discharge . . . shall constitute conclusive proof of his or her literacy." It seems to manifest for argument that a citizen's qualification to intelligently exercise the elective franchise is in actuality irrelevant to his status as an "honorable discharged" veteran of the armed forces, since it is not a prerequisite for induction into the armed forces, or for honorable discharge from the armed forces that a person be literate in English or in any other language.

Section 155 of the New York Election Law (App., pp. 2a-5a) carries the discrimination several steps further along

the road. Thus: (1) A veteran of the armed forces who is confined to a veterans hospital is entitled to be registered for an absentee ballot. In such circumstances, that statute provides (subd. 5) the mere "signature" of such a veteran absentee voter" shall constitute *conclusive* proof of his or her literacy." (2) Under Subd. 11 of the same section, its "privileges" are "extended to the spouses, parents and children of honorably discharged members of the armed forces of the United States, whether living or dead" where such persons are inmates of "veterans bureau hospitals or federal or state institutions providing care for such persons". (3) Under the same subdivision 11 of the cited section, its benefits are extended beyond the list of such classes of persons to "the spouses, parents and children" of such persons who are "with such inmates".

In each of the instances referred to in the cited provisions of § 155, the mere "signing" by the applicant of an application for an absentee ballot (Subd. 12, b):

"shall constitute *conclusive* proof of his or her literacy" (App., pp. 4a-5a).

And, of course, "conclusive proof" even more than a "conclusive presumption" precludes either evidence or a finding to the contrary. See *Wigmore on Evidence* (3 Ed.), § 2492.

Manifestly, the circumstances that a citizen is a veteran or related to a veteran, or is an inmate of veterans hospital or is staying "with such inmate" is irrelevant to that person's proper qualification for exercising the elective franchise.

Thus, a person totally illiterate in any language is qualified to vote under New York, if he is a veteran or, whether or not he is a veteran, if he is confined to a Veterans' institution, or is "with" any inmate of a veteran institution, yet any other non-literate person, or even a person fully literate in the language of his place of

birth in the United States is deprived of his right to vote unless he is also literate in the language common to other parts of the United States.

C

Finally, in the light of the present status of the arts of communication, a literacy test is particularly lacking in justification. For, although in the 1920's when the literacy test provision was incorporated into the New York Constitution, reading matter was the principal means of mass communication, such is far from the fact today. In contrast, at the present time radio and television have taken over by far the largest share of the area of mass communication, particularly in the field of government and politics. See e.g. Christenson & McWilliams-*Voice of the People* (1962), pp. 39-53; Tyler, *Television and Radio* (1961), of *Mass Communication* (1954); Evans, *The Eighth Art* (1962), pp. 39-53; Tyler, *Television and Radio* (1961), pp. 109, *et seq.*

As the record in this case (R. 3) and as the record in the two other related cases now before this Court (see Transcript and Record in Nos. 847 and 877 at pp. 50-64) demonstrate, Spanish-speaking United States citizens have and use all the resources of modern mass-communication media and are at least as well informed upon matters relevant to the proper exercise of the franchise as are citizens literate in English.

In origin, purpose, operation and effect the challenged provisions of law are discriminatory and void. They purport to set up distinctions which do not rise to the quality of differences. The classifications which the literacy laws purport to establish are totally alien to any valid purpose related to voter-qualification. They are direct violations of the Equal Protection clause of the 14th Amendment. Upon this ground alone the English literacy test requirements of New York State Constitution Article II § 1 and Election Law §§ 150 and 168 are invalid.

POINT II

In violation of the 14th and 15th Amendments, the English literacy test requirements invalidly deprive native-born U. S. Citizens of Puerto Rican origin, whose native language is Spanish, of their basic citizenship rights.

We turn now to a consideration of the validity under the 14th and 15th Amendments of the cited provisions of the New York State Constitution and the provisions of the New York Election Law as they apply to American-born citizens of Puerto Rican birth, literate in their own language and not literate in the English language.

At the outset, attention is called to a commonly overlooked but significant distinction which exists between the United States citizens of Puerto Rican origin and foreign-born foreign language groups. The Puerto Rican is no more foreign-born than is a person born in New York or Ohio. He is a native American, and he can no more shed his citizenship (except by attaining citizenship in another nation) than he can shed his own skin. The language he speaks is just as American as the language spoken by the residents of New York or Ohio. Indeed, it was earlier in common use in our land than English. The Puerto Rican's culture is as American as the New Yorker's or the Ohioan's. Like the Spanish-speaking Americans of Texas and New Mexico, and like the French-speaking natives of Louisiana (see Transcript of Record in Nos. 847 and 877 at pp. 64-71), all share a common heritage, whose special values lie in their difference as well as in their similarities and in the contributions each makes to the multitude of cultures of which the American culture is an amalgam.

Nor need we be diverted from the direct and clear questions presented here by consideration of whether the Commonwealth of Puerto Rico is a State or a Territory or something between the two. (See *Documents on the*

Constitutional History of Puerto Rico (2 Ed.), Wash. D. C. 1964, pp. 217-331). Our only concern is with the political rights of native-born U. S. citizens.

And upon this aspect of the case, we address ourselves to the basic provision of the Federal Constitution, which, we submit, controls here; the first section of the 14th Amendment:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws."

That appellant is a born citizen of the United States is undisputed; that it therefore follows that she has by her residence attained citizenship of New York is unquestioned. There remains only the question whether the challenged provisions of the New York Constitution (and the provisions of the Election Law which purport to carry it out) deprive her of her New York State citizenship or constitute laws which "abridge" her "privileges or immunities," as a citizen of the United States or deny her "equal protection of the laws."

It is submitted that the question need only be asked to be answered. For clearly, appellant cannot properly call herself a "citizen" of New York, if a basic right of citizenship—the right to vote, is denied to her, particularly when the only reason for that denial is her natural state as a Puerto Rican born citizen whose native language differs from that commonly prevalent in New York.

Can it be said that the "law" pursuant to which this deprivation of citizenship rights is denied appellant does not "abridge" her "privileges and immunities" and does not deny her "equal protection of the laws"? Surely not. Consider: non-literacy in the English language is an

inherent quality of United States citizens of Puerto Rican birth, as much as is the quality of their skin color, their culture, their "race" or their physical characteristics. Requiring that native-born United States citizens of Puerto Rican origin be able to read and write English before attaining citizenship rights in New York is the equivalent of requiring that they be born in an English-language part of the United States as a condition of attaining New York state citizenship. Both are clearly offensive to the concept of National citizenship, which is basic in our form of government. If by virtue of an inherent quality, tied to their very nature, and resting upon the part of United States territory from which they came, United States citizens can be deprived of their citizenship rights, then the cited provision of the 14th Amendment is rendered meaningless.

This Court aptly noted that Puerto Rican-born United States citizens are entitled to "exact equality with citizens from the American homeland", *Balzac v. Commonwealth of Puerto Rico*, 258 U. S. 298, 311 (1921). The right to vote is a basic right of all citizens of our Nation. Without that basic right no person can claim to be in possession of full and equal citizenship in a democracy or under a republican form of government.

As this Court held in *Westbery v. Sanders*, 84 S. Ct. 526, 545 (1964), and repeated in *Reynolds v. Sims*, 84 S. Ct. 1362, 1380 (1964):

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory, if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

Appellant pays taxes for the support of the government. She stands ready, as all of her class, to serve her

country in war. In the service of the army of the United States Americans of Puerto Rican origin have not been asked to take literacy tests in English—and Puerto Ricans have fallen before enemy guns in three wars in which our country was in jeopardy. Appellant is subject to the laws of her country. She sustains all of the duties and obligations of citizenship, yet she has been denied the one right of citizenship which is greater than all others: the right to join in choosing who shall govern her. The rights of citizens of the United States must be reciprocal or discrimination necessarily results. If New York State can deny the right to vote to a Spanish-speaking native-born citizen of New Mexico until he learns what to him is a foreign language, English, then the State of New Mexico can return the compliment and deny the right to vote to native-born New York citizens until they learn to speak what to them is a foreign language, Spanish. Obviously, such a state of affairs would flout the basic concepts of national citizenship upon which our Nation was founded. Under the Constitution of the Commonwealth of Puerto Rico, adopted by the Puerto Rico on March 3, 1952, and amended and ratified by the United States Congress on July 3, 1952 (30 Stat. 1759) not only may an English-speaking New York citizen who moves to Puerto Rico vote in elections held there, notwithstanding his inability to read or write the native language of Puerto Rico, but the Constitution of Puerto Rico (Art. III, § 5, Art. VI, § 4), guarantees that he may be elected to office notwithstanding that he is literate only in English.

In contrast to these provisions, the cited provisions of New York law operate to automatically deprive appellant of her basic rights of United States citizenship upon her achieving New York citizenship: In Puerto Rico appellant was a duly qualified voter and as such voted in regular and special elections; by moving to New York and becoming a citizen of New York, it has, in effect been held by appellees, appellant forfeits her basic citizenship rights. It is submitted that this is inconsistent with reason and law.

The United States citizenship which appellant's birth in Puerto Rico endowed her with, was not a limited privilege to enjoy only such of those rights of citizenship as various State governments might see fit to accord to her: it is an unqualified right of citizenship and it includes the right to live in, and automatically attain full citizenship in every State of the Union. If by the accident of her birth in a part of our Nation in which the common language is Spanish appellant can be deprived of her right to vote for President, Senator, Congressman, Legislator, Mayor and Councilman in the City where she lives, she is relegated to a "second-class citizenship" which, as this Court said recently, our Constitution prohibits (*Schneider v. Rusk*, 84 S. Ct. 1187, 1190 [1964]).

POINT III

By a succession of federal statutes and by its enactment of the Constitution of Puerto Rico Congress has granted full United States citizenship to persons born in Puerto Rico and precluded the application to them of literacy tests. An English-literacy test requirement imposed upon the Spanish-speaking Puerto Ricans is totally inconsistent with such a grant of full citizenship and with the express policy of Congress.

Entirely apart from what we have already said, there are further considerations which compel the conclusion that the English-literacy test requirements of New York law cannot validly be applied to appellant and other native-born United States citizens of Puerto Rican origin.

Puerto Rico was incorporated into the territory of the United States pursuant to the Treaty of Paris of 1898 (30 Stat. 1759). In the Jones Act of 1917 (Public Law 600) and in later statutes (See, *e.g.*, Nationality Act of 1940, ch. 876, Tit. I, subch. II) Congress expressly accorded full United States citizenship to native-born Puerto Ricans.

They were, in the language of the Jones Act, "declared and shall be deemed and held to be citizens of the United States". In none of those statutes has Congress in any way indicated that the "political rights" of persons born in Puerto Rico shall be dependent upon their ability to read and write English. On the contrary, as this Court, speaking through Chief Justice Taft, said in *Balzac v. Puerto Rico*, 285 U. S. 298, 308 (1921), the very purpose of the Jones Act was to permit Puerto Rican-born Americans "to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political".

This purpose was reiterated more recently when Congress explicitly precluded political discrimination against Spanish-speaking, native-born Puerto Ricans by its adoption (66 Stat. 327) of Article VI, section 4 of the Constitution of the Commonwealth of Puerto Rico, which provides:

"No person shall be deprived of the right to vote because he does not know how to read or write or does not own property."

The complex of Federal statutes enacted pursuant to the Treaty of Paris and the Congressionally approved Constitution of the Commonwealth of Puerto Rico are all, in the respects noted, at variance with the English-language literacy provisions of New York law above referred to, and those provisions of law are invalid as applied to petitioner and to other United States citizens of Puerto Rican birth, under the United States Constitution.

The Congress-approved Constitution of the Commonwealth of Puerto Rico (the authority of which lies in the Treaty of Paris) is both implicitly and explicitly at variance with the English-literacy test requirements of New York law. That Constitution approved by the President and adopted by Congress (66 Stat. 327), closes its preamble as follows:

"We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere; our fervor for education; our faith in justice; our devotion to the courageous, industrious and peaceful way of life; our fidelity to individual human values above and beyond social position, racial differences and economic interests; and our hope for a better world based on these principles."

Recognizing that ours is not a single-culture Nation but a fusion of several cultures, principally English and Spanish, Congress has thus declared that both Spanish and English are recognized tongues of our country and our hemisphere. This it has done, not only by providing that public elective office under the Puerto Rico Constitution which it approved shall be open to those of either language, but it has gone further and expressly prohibited the application of literacy tests to citizens born in Puerto Rico as a qualification for voting. Congress has recognized that the full citizenship status of Puerto Rican-born Americans would not be attained if the exercise of those rights were dependent upon a reading and writing knowledge of a language which to the Puerto Rican is foreign.

Upon these grounds, too, the provisions of New York law which preclude appellant from exercising her citizen's right to vote solely upon the ground of her inability to read and write English are void as violative of Article IV, §§ 2 and 4; Article VI, Amendments V, XIV and XV of the United States Constitution.

POINT IV

The United States by a separate commitment to United Nations in regard to its citizens of Puerto Rican origin as well as by its adoption of the U. N. Charter, has undertaken to accord to them full citizenship rights, without regard to their language, and thus precluded the imposition of literacy tests upon them.

In *Curran v. City of New York*, 191 N. Y. Misc. 229, affd. 275 N. Y. App. Div. 784, the Court expressly held that the United States and each of the States are bound by the United Nations Charter and by all commitments made by the United States under and pursuant to that Charter. And this leads us to the final and independent argument against the application of the English-literacy test requirements to petitioner and other United States-born citizens of Puerto Rican origin.

We note at the outset that the United Nations Charter is a "multilateral treaty" which was signed and ratified by the President and the Senate pursuant to the Treaty power, embodied in United States Constitution Art. III, § 2, para. 2 (*Curran v. City of New York, supra*), and that its preamble requires the United States, as a party, to accord "respect . . . for fundamental freedoms for all without distinction as to race, sex, language or religion" (*id.*). ". . . [T]hese provisions". Justice Hill observed in the *Curran* case, "are the law of the land."

However, we need not rest there. For, in 1953, the government of the United States formally and expressly committed itself to the United Nations to accord to its citizens of Puerto Rican birth full and complete political rights. This, the United States Government did as part of an elaborate presentation, the purpose of which was to exempt itself from United Nations control over Puerto Rico as "colonial territory" of the United States, pur-

suant to Article 73 (e) of Chapter XI of the United Nations Charter. (*U. S. Participation in the U. N.*, Report by the President to the Congress for the year 1953, pp. 181, *et seq.*). Upon the basis of this commitment, the General Assembly of the United Nations adopted a Resolution declaring Chapter XI of the United Nations Charter inapplicable to Puerto Rico (*id.*).

Addressing itself specially to the political rights accorded to the people of Puerto Rico, the "*Memorandum by the Government of the United States, etc.*" submitted to the United Nations on March 21, 1953, stated that the people of Puerto Rico have had:

"... universal adult suffrage since 1939. There have been no property requirements since 1906 and the last literacy requirements were removed in 1935."

It further noted that full and complete United States citizenship has been enjoyed by the Puerto Rican people since 1917, and that, "the Constitution of the Commonwealth (of Puerto Rico) is similar to that of a State of the Federal Union". It further assured the General Assembly:

"The people of Puerto Rico continue to be citizens of the United States as well as Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable to Puerto Rico . . . The People of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage, in free and periodic elections in which differing political parties offer candidates, and which are assured freedom from undemocratic practices by the Constitution itself."

The commitment made formally by the Government or the United States to the General Assembly of the United Nations, constitutes, under the United Nations Charter which was duly ratified by the President of the United

States, by and with the advice and consent of the Senate of the United States on August 8, 1945, an exercise of the treaty and foreign relations powers of the Government of the United States pursuant to Article VI of the Constitution of the United States and the United Nations Participation Act (22 U. S. C. §§ 287, *et seq.*), and as such, binds the United States and each State of the Union (*Curran v. City of New York, supra*), in the language of Article VI of the Constitution, "any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

The imposition upon United States citizens of Puerto Rican birth of the intolerable and unreasonable condition that in order to exercise their political rights as United States citizens under the commitment aforementioned they must learn a language which to them is foreign, directly violates the essence of their citizenship and effectively cancels out that commitment, in contravention of Article VI of the United States Constitution, the United Nations Participation Act, the Charter of the United Nations, and the formal commitment referred to. If any State is permitted to require that Spanish-speaking citizens of Puerto Rico origin must be English-speaking in order to attain full citizenship, the result would be to nullify their United States citizenship and take away what Congress has granted and what the United States government committed itself to in the United Nations. Consequently, for these reasons, too, the application to appellant of the provisions of New York law referred to, the denial by appellees of her application to register for voting upon the sole ground of her inability to read and write English and their denial of her demand that she be permitted to take a voter's literacy test in her own language, Spanish, are all acts contrary to supervening provisions of the Federal Constitution, law and treaty.

CONCLUSION

There are in New York City alone, more than 400,000 United States citizens of Puerto Rican birth, literate in Spanish but not literate in English. (See Transcript of Record in Nos. 847 and 877 at pp. 14-15.) At the present time, under a curious pattern of discriminatory laws persons so situated are denied the basic right of citizenship, the right to vote. They are denied that right because of factors which inhere in their culture as native-born American citizens and they are thus reduced to a second class citizenship status antipathetic to our basic constitutional doctrines. The appellant here, as the Chief Judge of the New York Court of Appeals (and two of his colleagues) noted, is "a competent, intelligent and reasonably well educated and informed native born American citizen" (R. 41). Yet, she is denied the right to vote merely because she cannot read and write in a language which to her is foreign, while others, totally illiterate are permitted to vote. This, as Chief Judge Desmond observed, is "unreasonable and unconstitutionally discriminatory" (*id.*).

The questions which we present to this Court are neither resolved by or involved in the recently-enacted Voting Rights Law which is the subject of Nos. 847 and 877; they stand separate and independent of that statute. However, in measuring the significance of the question presented by this appeal and in proposing to this Court the answers which they should receive, we submit that it is appropriate to call attention to the historic March 15, 1965 address of the President in support of the Voting Rights Law in which he characterized it as

"wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country."

It is to right this "deadly wrong" that we are appealing to this Court.

The order appealed from should be reversed. This Court should order that the petition be granted and appellees New York City Board of Elections be directed to enroll appellant as a duly qualified voter or in the alternative to subject appellant to a literacy test in the Spanish language and, upon passing such test, enroll appellant as a duly qualified voter.

March 10, 1966

Respectfully submitted,

PAUL O'DWYER,
Attorney for Appellant.

W. BERNARD RICHLAND,
of Counsel.

The order appealed from should be reversed. This Court should order that the petition be granted and that the United States District Court be directed to issue a writ of habeas corpus in favor of the petitioner. The order appealed from is hereby quashed and the petition is granted and a writ of habeas corpus is issued in favor of the petitioner.

Very respectfully submitted,
[Signature]

Witness my hand and seal of the Court at the City of New York, this 10th day of June, 1906.

U. S. District Court, Southern District of New York.
[Signature]

U. S. District Court, Southern District of New York.
[Signature]

APPENDIX

New York Laws Involved

A. NEW YORK STATE CONSTITUTION, ARTICLE II, § 1

§ 1. Every citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state for one year next preceding an election, and for the last four months a resident of the county, city, or village and for the last thirty days a resident of the election district in which he or she may offer his or her vote, shall be entitled to vote at such election in the election district of which he or she shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people . . .

Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English.

B. NEW YORK STATE ELECTION LAW

I

§ 150. QUALIFICATION OF VOTERS.

A person is a qualified voter in any election district for the purpose of having his or her name placed on the register if he or she is or will be on the day of the election qualified to vote at the election for which such registration is made. A qualified voter is a citizen who is or will be on the day of election twenty-one years of age, and who has been an inhabitant of the state for one year next preceding the election, and for the last four months a resident of the county, city or village and for the last thirty days a resident of the election district in which he or she offers his or her vote, provided, however, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an elec-

tion, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election district in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be entitled to vote at such election in the election district from which he or she has so removed. If a naturalized citizen, such person must, in addition to the foregoing provisions, have been naturalized at least ninety days prior to the day of election. In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A "new voter," within the meaning of this article, is a person who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight.

II

§ 155. VETERANS' ABSENTEE REGISTRATION.

1. A voter other than a registered voter qualified to vote at the ensuing general election, may, if he is an inmate or patient in a veterans' bureau hospital in this state, be registered in the manner herein provided.

2. The board of elections in the county in which a veterans' bureau hospital is located shall appoint, after nomination by the respective county chairmen of the parties which in the preceding gubernatorial election polled the highest and next highest number of votes, one or more bipartisan boards of registration, each composed of two inspectors of election, who shall attend such hospital between the hours of nine o'clock in the morning and five o'clock

in the evening on the seventh Thursday before the general election and, in the event that it be necessary for the completion of their herein described duties, on the seventh Friday before such election and such other days as may be necessary and then and there receive from inmates or patients therein the applications of such of them as desire and are qualified to be registered.

3. Each application shall be made in writing and under oath, administered by a member of such board. Except as herein otherwise provided, it shall be signed by the applicant. If he state that he is unable to sign, such board shall administer to him the oath prescribed by section one hundred sixty-nine and each member thereof shall certify, at the bottom of the application, to the nature of the applicant's disability regarding his inability to sign.

. . .

5. The signature of any new voter applying to be registered in the manner prescribed by this section shall constitute conclusive proof of his or her literacy. If an oath is administered to any new voter because such voter is unable to sign the application, the administering of such oath and the certification by the board, as prescribed in subdivision three of this section, shall constitute conclusive proof of his or her literacy.

. . .

8 . . . c. Where permanent personal registration is in effect, the board of elections shall, in such case, forthwith cause a central registration board to fill out, on behalf of such applicant, a set of registration records, using the information furnished in his application, paste a photostatic copy of the applicant's signature, as the same appears on such application, in each space provided on the registration records for the insertion of the registrant's signature, and insert such registration records in the proper file maintained by it for such purpose. Such registration records

shall be marked or stamped conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be. If an application for registration under this section or an application for an absentee ballot from a person otherwise entitled to be registered under this section is received and it appears that such applicant or person is already registered under permanent personal registration from the residence address stated on his application, his permanent personal registration records shall likewise be stamped or marked conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be.

• • •

11. The privileges of this section relating to veterans' absentee registration are hereby extended to the spouses, parents and children of honorably discharged members of the armed forces of the United States, whether living or dead, when such relatives are inmates of veterans' bureau hospitals or federal or state institutions provided for the care of such persons and to the spouses, parents and children of inmates and patients of veterans' bureau hospitals who are with such inmates and patients and for that reason will be absent from the counties of their residence at the time of the next general election and entitled to an absentee ballot under the provisions of subdivisions four and six of section one hundred seventeen, and each of such persons upon application, if otherwise lawfully entitled thereto, shall be registered in the manner provided by this section. All provisions of this section relative to the application for registration and to the powers and duties of boards of election and other election officers also shall apply to the registration of the persons above described.

12. a. In case the veterans' bureau hospital in which any veteran entitled to vote in this state is an inmate or patient, is located outside the state of New York, the signing of such veteran's name to an application for an ab-

sentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration wherever such registration is required.

b. The provisions of paragraph a of this subdivision are hereby extended to the spouse, parent or child of such veteran, accompanying or being with him or her, if a qualified voter and a resident of the same election district; the signing by such spouse, parent or child of his or her name to an application for an absentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration whenever such registration is required.

. . .

III

§ 168. PROOF OF LITERACY AND REGULATIONS

1. The board of regents of the state of New York shall make provisions for the giving of literacy tests.

In election districts in which personal registration is required, a certificate of literacy issued to a voter under the rules and regulations of the board of regents of the state of New York to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be received by election inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

In election districts in which personal registration is not required, literacy tests may be given by the election inspectors on election and registration days only.

Literacy tests may be given by central registration boards to applicants for registration by such boards at any time during business hours within the period when central registration is permitted.

Literacy tests may also be given by veterans' absentee registration boards to applicants for registration by

such boards, except in cases where the signing of an application constitutes conclusive proof of literacy as provided in section one hundred fifty-five of this chapter, at any time when such boards are in attendance at a veterans' bureau hospital for the purpose of the registration of qualified inmates or patients therein.

Such election inspectors in election districts in which personal registration is not required or central or veterans' absentee registration boards shall issue and file a certificate of literacy, under the same rules and regulations of the board of regents of the state of New York applying to districts in which personal registration is required, to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be filed by election inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

2. Any such certificate of literacy, when issued, shall bear an individual number and shall be in duplicate. One of such duplicates may be retained by the person to whom it is issued, and the other duplicate shall be the certificate received or filed by the election inspectors or by a central or veterans' absentee registration board, as the case may be. All duplicate certificates so received or filed by such inspectors and boards shall be retained by them and transmitted on the day received to the board of elections of the county, except in the city of New York where they shall be transmitted to the board of elections of such city, and be kept on file by such boards of elections. But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing

that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language or a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance. But the genuineness of the certificate and the identity of the voter shall remain questions of fact to be established to the satisfaction of the election inspectors and subject to challenge, like any other fact relating to the qualification of a voter.

. . .

3. The inability of a voter, save for physical disability only, obvious to the election inspectors to write his name in a register or poll-book, shall be deemed conclusive proof of inability to read and write English, notwithstanding the presentation of proof of literacy as herein provided.

4. Upon registering a voter after receiving proof of literacy, each inspector or the central or veterans' absentee registration board shall make a note upon his register, or upon the registers in case of central or veterans' absentee registration, in the registration remarks column, "proof of literacy presented."

5. A person who has heretofore voted a war ballot pursuant to the law of this state, shall state to the appropriate board the place where and the time when he or she voted and the voting address in New York state used at such time, which statement shall constitute conclusive proof of his or her literacy.

6. Presentation of a certificate of an honorable discharge from any of the armed forces of the United States by a person who was a resident of the state of New York at the time he became a member of the armed forces, and who is entitled to such discharge, shall constitute conclusive proof of his or her literacy.

IV

§ 201. DELIVERY OF BALLOT TO VOTER

1. . . . A person shall not be allowed to vote unless he shall have signed his name or made an identification statement as required by section one hundred ninety-eight. In the case of a new voter, as defined by section one hundred fifty, at a general election or a special election for which voters are required to be registered under the provisions of this chapter, in an election district where registration is not required to be personal, if the words "new voter" were entered opposite his name in the registers, he shall not be allowed to vote unless it appears to the satisfaction of the board of inspectors, by the proof prescribed by section one hundred sixty-eight, that he is able to read and write English, except in the case of such a voter who is shown to be incapacitated therefrom by physical disability only. A new voter, as so defined, at an election for which voters are not required to be registered under the provisions of this chapter shall not be allowed to vote unless it appears to the satisfaction of the election officers, from such sources of information as may be available, that he is able to read and write English, except in the case of such a voter who is shown to be so incapacitated by physical disability only; and for such purpose the election officers may require him to produce a certificate of literacy described in section one hundred sixty-eight.

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IN THE
Supreme Court of the United States

October Term, 1965

No. 673

MARTHA CARDONA,

Appellant,

vs.

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the Board
of Elections of the City of New York,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing
specially pursuant to Section 71 of the Executive Law.

**BRIEF OF AMERICAN JEWISH CONGRESS,
AMICUS CURIAE**

The American Jewish Congress has sought and received
consent of the parties to submit this brief *amicus curiae*.

Statement

Appellant, Martha Cardona, is a native-born citizen of
the United States who is literate in Spanish, the native
language of her place of birth, Puerto Rico (R. 2). She
voted regularly in gubernatorial, legislative and municipal

elections in Puerto Rico prior to coming to New York City in 1948 (R. 3). The facts set forth in her petition indicate that she had access to sufficient sources of information and has utilized such sources to become an informed and knowledgeable citizen (R. 3). Nonetheless, she and large numbers of her fellow citizens similarly situated, although they are literate in the language which they learned in their United States schools, are denied the right to vote in New York State pursuant to Article II, Section 1 of the New York State Constitution and Sections 150, 168 and 201(1) of the New York State Election Law. The constitutional provision reads, in part, as follows: " * * * after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote * * * unless such person is also able, except for physical disability, to read and write English."

Appellant's application for an order directing that the members of the Board of Elections of the City of New York register her as a duly qualified voter or, in the alternative, directing the Board to give appellant a literacy test in the Spanish language (R. 1) was denied by the Supreme Court of New York County (R. 37-38). The New York Court of Appeals, voting four to three, affirmed (R. 40-41).

Questions to Which this Brief is Addressed

This brief *amicus* considers only the following questions:

1. Is the denial of the right to vote to native American citizens who, although literate in Spanish, are unable to meet the English literacy requirement of New York State

a violation of either the Privileges and Immunities or Due Process Clauses of the Fourteenth Amendment?

2. Is the English literacy requirement for voting a violation of the Equal Protection Clause of the Fourteenth Amendment and the prohibition of discrimination in the Fifteenth Amendment because its purpose and effect is to discriminate against specific groups in the population?

3. Does the New York English literacy requirement violate the Fourteenth and Fifteenth Amendments because it contains an impermissible "grandfather clause"?¹

Interest of the American Jewish Congress

The American Jewish Congress was formed in part "to help secure and maintain the equality of opportunity * * * to safeguard the civil, political, economic and religious rights of Jews everywhere" and "to help preserve and extend the democratic way of life." It has a special interest in assuring equal recognition of the social, economic and

1. The American Jewish Congress sought consent to file an *amicus curiae* brief in *Katsenbach v. Morgan*, October Term 1965, Nos. 847 and 877 as well as in this case. Consent was granted by the United States, the State and City of New York but not by the appellee. Accordingly, we do not discuss in this brief the question whether Congress validly nullified the New York English literacy requirement, in whole or in part, by adopting Section 4(e) of the Voting Rights Act of 1965. We note, however, that a decision in the *Morgan* case upholding the validity and effectiveness of Section 4(e) would not dispose of the issues to which this brief is addressed or render them moot. Section 4(e) does not invalidate the New York voting limitation *in toto* but merely suspends it as to persons educated in American-flag schools. Other American citizens, not literate in English, would be barred from voting in New York even if Section 4(e) were upheld.

political interests of minority groups and it combats discrimination against such groups whether on grounds of race, religion or national origin or because of the expression of unpopular views.

It is the belief of the American Jewish Congress that the disfranchisement of American citizens of Puerto Rican origin effected by the English literacy test established in New York is wholly unjustifiable and tends to perpetuate the hardships that this substantial minority group faces in its attempts to become part of the mainstream of American society. Although there were in the past a number of American citizens of the Jewish faith who were disfranchised by the requirement of English literacy, the major impact of this inequitable requirement falls today upon the Puerto Rican American who is literate only in the language native to his place of birth in this country.

No right is more cherished or more important to any segment of United States citizenry than the right to vote and to be heard by the executive, legislative, and judicial branches of the government. To shut off the voice of this substantial group of persons who reside within a fairly limited geographical area in the City of New York is to deprive them of their single most important political right.

The denial of appellant's application for relief continues in effect a set of laws which are inimical to two of the basic traditions of this country—universal adult suffrage and cultural pluralism. The issues presented on this appeal raise serious questions concerning the very core of our republican form of government and the preservation of American democratic principles.

Summary of Argument

I. A. Denial of the right to vote to one who is literate in a language other than English in common use in the community in which he resides deprives him of privileges and immunities as a citizen of the United States and also of his liberty as a person, in violation of the Fourteenth Amendment.

The right to vote is an essential element of our democratic system which can be denied only upon the clearest evidence that the denial is required by the common weal. The state cannot and has not shown that disenfranchisement of appellant and others similarly situated is unquestionably necessary to achieve intelligent exercise of the ballot.

B. The right to vote impaired by the New York English literacy requirement should be found to be a privilege and immunity of Federal citizenship, protected against impairment by the Fourteenth Amendment. We urge the Court to reach this result, overruling or limiting, if necessary, its decision in the *Slaughter-House Cases*, 16 Wall. 37 (1873).

C. The same result can be reached under the Due Process Clause of the Fourteenth Amendment, since it is plain that the term "liberty" as used in that amendment includes the fundamental freedoms upon which our democratic society rests, including the right to vote.

II. A. The New York English literacy requirement violates the prohibitions of discrimination contained in the Fourteenth and Fifteenth Amendments.

B. The history of the New York requirement clearly demonstrates that its purpose was to discriminate against

later arriving persons who were not of "Anglo-Saxon stock." The arbitrary character of the requirement further supports the view that its purpose was not to protect the voting process.

C. A state literacy test which is intended to and is effective to discriminate among voters on the basis of national origin is unconstitutional under both the Fourteenth and Fifteenth Amendments.

III. The New York English literacy test is a "grandfather clause" which perpetuates discrimination in a manner that violates the Fourteenth and Fifteenth Amendments. It effects the same discrimination condemned in previous decisions of this Court dealing with grandfather clauses.

ARGUMENT

POINT ONE

Denial of the right to vote to one who is literate in a language other than English, which is in common usage in the community wherein he resides, deprives him of his privileges and immunities as a citizen of the United States and his liberty as a person in violation of the Fourteenth Amendment.

A. The Role of the Right to Vote in our Constitutional System

The one element of a democratic government which, above all others, distinguishes it from all other forms of government is the participation of the people in the selection of those who govern them. We dissolved the political bonds which connected us with England because its King

denied us that right, and in our declaration of the causes which impelled the separation we asserted that only those powers are justly exercised as are derived from the consent of the governed. The Constitution which conferred powers on the independent government established after the severance was ordained by "We, the people."

Ideally, the consent of the governed is best exercised by the direct "town meeting" vote of the people on every legislative proposal—a procedure known in political science as pure democracy. This, obviously, was hardly practicable in 1787 and is even less so today. Our Constitution, therefore, set up the next best thing—representative government. Representative government, however, is democratic government only to the extent that the representatives are selected by the people they govern. This view has been expressed by this Court on many occasions.

Thus, in *Yick Wo v. Hopkins*, 118 U. S. 356, 370 (1886), this Court said:

Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless it [the political franchise of voting] is regarded as a fundamental political right, because *preservative of all rights*. (Emphasis added.)

A more recent decision, *Wesberry v. Sanders*, 376 U. S. 1, 17 (1964), reemphasized that view:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. (Emphasis added.)

And it gave perspective to that concept by a quotation from No. 57 of *The Federalist* (*id.* at 18):

“Who are to be the electors of the Federal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States
• • •”

Again, in *Reynolds v. Sims*, 377 U. S. 533, 565 (1964), this Court said:

• • • representative government is in essence self-government through the medium of elected representatives of the people and each and every citizen has an inalienable right to full and effective participation in the political processes of his state's legislative bodies.

There is, of course, always a gap between principle and practice. Objectives and ideals unavoidably find themselves compromised to the demands of political realities. Only the members of the House of Representatives were, in 1787, to be chosen “by the people.” Senators were to be elected indirectly and were to be distributed upon a geographic rather than popular base. Inability to agree upon qualifications for voting impelled the constitutional fathers to leave the issue to the states for determination (with the significant command that they should be the same as imposed upon electors of the “most numerous branch of the state legislatures”), and within the states restrictions on access to the ballot were numerous and widespread. Women and Negroes were universally disenfranchised. So too were paupers and in some states non-landowners. In a few

non-Christians and even, under some circumstances, non-Protestants, could not exercise their franchise. Cobb, *The Rise of Religious Liberty in America*, 502.

It was, however, not the purpose of the Constitution to freeze these impairments of democracy into our governmental structure for all time. The history of the United States is a chronicle of expanding democracy. Steadily we have been progressing towards the ultimate (even if, perhaps, never fully attainable) goal of universal franchise. Religious restrictions upon voting disappeared first; the era of Jacksonian democracy brought an end to most state property qualifications. Negroes and women later achieved constitutionally protected access to the polling places. United States Senators were required to appeal to the people directly for their votes. Residents of the District of Columbia were enfranchised at least in part and the poll tax was removed as a barrier to the ballot box in Federal elections.

It is true that most of these changes were effected by express constitutional amendment or statutory enactment. Nevertheless, the judiciary too has its responsibilities of office. Can it be doubted that were the requirement in the original New York constitution that applicants for citizenship and thus for the franchise abjure all foreign allegiance, "ecclesiastical as well as civil," effective today it would be adjudged unconstitutional by this Court? It was the judiciary, after long default by the legislature, which mandated, as far as possible, the democratic principle of one man, one vote.

Democratic expansion did not come to a halt in 1787, even as far as the judiciary is concerned. The secret ballot was unknown then, but there is no question that it would be constitutionally protected today. Real property ownership qualifications for voting were widespread but even aside from the 14th Amendment would this Court uphold a Congressional statute limiting the right to vote in the District of Columbia to persons owning real property? The United States has called upon this Court to declare unconstitutional the poll tax requirement for voting in state elections even though the 24th Amendment is expressly limited to Federal elections.

Whatever may have been the situation in 1787, we submit that American constitutional democracy today requires that no person may, except for the gravest reasons, be denied the right to participate in the selection of the persons who exercise the power to govern him. As the Court said in *Reynolds v. Sims*, *supra*, 377 U. S. at 555:

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.

We submit that today, with the exception of children and the mentally incompetent,² every person has an inherent

2. John Locke, godfather of the Declaration of Independence and our representative government, recognized the validity of these exceptions (*Second Treatise on Government*, Laslett, ed.):

55. *Children*, I confess are not born in this full state of *Equality*, though they are born to it. Their Parents have a sort of Rule and Jurisdiction over them when they come into the World, and for some time after, but 'tis but a temporary one. The Bonds of this Subjection are like the Swadling Cloths they are wrapt up in, and supported by, in the weakness of their

right to vote and a governmental deprivation of that right is constitutionally justifiable only upon the clearest evidence that it is required by the common weal. We submit further that this is one of the privileges and immunities guaranteed to the people by the 14th Amendment against abridgement by the states and a liberty guaranteed by it against deprivation by the states without due process of law.

We are not required in this case to challenge disenfranchisement of felons and non-citizens. Nor need we here challenge the assumption in *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45 (1949), that the state has a sufficient interest in the intelligent use of the ballot

Infancy. Age and Reason as they grow up, loosen them till at length they drop quite off, and leave a Man at his own free Disposal.

* * *

60. But if through defects that may happen out of the ordinary course of Nature, any one comes not to such a degree of Reason, wherein he might be supposed capable of knowing the Law, and so living within the Rules of it, he is *never capable of being a Free Man* he is never let loose to the disposure of his own Will (because he knows no bounds to it, has not Understanding, its proper Guide) but is continued under the Tuition and Government of others, all the time his own Understanding is capable of that Charge. And so *Lunaticks* and *Ideots* are never set free from the Government of their Parents; *Children, who are not as yet come unto those years whereat they may have; and Innocents which are excluded by a natural defect from ever having; Thirdly, Madmen, which for the present cannot possibly have the use of right Reason to guide themselves, have for their Guide, the Reason that guideth other Man which are Tutors over them, to seek and procure their good for them, to seek and procure their good for them*, says Hooker, Ecc. Pol. Lib. 1. Sec. 7. All which seems no more than that Duty, which God and Nature has laid on Man as well as other Creatures, to preserve their Off-spring, till they can be able to shift for themselves, and will scarce amount to an instance or proof of Parents Regal Authority.

to justify conditioning it upon ability to read and write. Indeed, we can even concede that the most likely means of assuring the intelligent use of the ballot is to require literacy in the English language, even though thereby not only Spanish speaking citizens in New York but Japanese and Chinese speaking citizens in Hawaii are disenfranchised.

We submit, however, where an "inalienable Right" which is "of the essence of a democratic society" is concerned, it is not sufficient that the state has selected a likely method among various apparently reasonable alternatives. In such a situation the state is required to establish by the clearest evidence that no practicable alternative method to achieve a specific end exists other than disenfranchisement of citizens literate in a language other than English. We submit, finally, that in a community in which there are widespread organs of public communication in the citizen's tongue, such as newspapers, periodicals, radio and television, which regularly report and comment on matters of political interest and public concern, a state's determination that no practicable alternative exists cannot be sustained.

According to the 1959 Report of the United States Commission on Civil Rights, pp. 67-68, there are approximately 618,000 American citizens of Puerto Rican ancestry living in New York City. About 190,000 of them have lived here long enough to satisfy the state's residence requirements for voting. However, 59% of Puerto Rican residents of New York read and write only Spanish and are therefore not permitted to vote. Although the exact number so disenfranchised is not indicated in the Commission's report, it does state that "this Commission has found that Puerto

Rican-American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York."

We submit that only the most cogent grounds can justify the denial of the franchise to so substantial a number of American citizens who are residents of New York. It is quite reasonable that a court in reviewing the constitutionality of a statute should give great weight to the judgment of the legislature in its determination of the necessity of the legislation. Ordinarily, if a situation exists which the legislature deems to require legislative action, the courts will not interfere with its determination of the appropriateness of a particular remedy unless the legislature's act was patently unreasonable. *United States v. Carolene Products Co.*, 304 U. S. 134, 152-3 (1958). Where, however, the legislation abridges a fundamental right of American citizens, a far sterner test is imposed. "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice." *Thomas v. Collins*, 323 U. S. 516, 530 (1945). As was said in *Thornhill v. Alabama*, 310 U. S. 88, 95-96 (1940):

Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions.

Where the legislation restricts the right to vote, the most stern judicial test is to be applied when its constitutionality is challenged. In *United States v. Carolene Products*, *supra*, 304 U. S. at 152-3, n. 4, the Court did not find it necessary " * * * to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. * * *" In subsequent cases, however, the Court did find it necessary to pass upon the question and answered it in the affirmative. *Thomas v. Collins*, *supra*; *Thornhill v. Alabama*, *supra*.

The reason for the imposition of a sterner test in cases involving fundamental liberties, particularly those affecting the franchise, is obvious. One may well urge that, in general, removal of unwise laws should be sought by appeal not to the court but to the ballot and to the processes of democratic government. But this necessarily implies that recourse to the ballot is unobstructed and that the processes of democratic government are kept free to operate. It follows that the Court should subject to a closer than ordinary scrutiny and impose more exacting standards in respect to legislative actions that obstruct the channels for legislative change. It little profits the Spanish-speaking Puerto Ricans that the literacy test assailed here can be removed by action of the legislature if they are barred from participating in the process of selecting the legislature. In such a case, the Court must assume something of the nature of a fiduciary for the protection of

the otherwise unprotected disenfranchised and must demand a strict accounting on the part of the legislature.

This is particularly so where the disenfranchised are a racial, religious or national minority. *United States v. Carolene Products, supra*; *Meyer v. Nebraska*, 262 U. S. 390 (1923); *Farrington v. Tokushige*, 273 U. S. 284 (1927).

This Court therefore must determine what legitimate end the assailed literacy test sought to achieve, and whether the use of the literacy test is a valid means to achieve that end. In this respect, we submit that the only legitimate end that could be sought to be achieved was to assure that citizens exercising their elective franchise have a reasonably intelligent understanding of the issues and the candidates upon whom they are called to pass judgment, so that they can make "intelligent use of the ballot." *Lassiter v. Northampton County Board of Elections, supra*, 360 U. S. at 51.³

3. It is, we submit, beyond the constitutional power of the legislature to employ the grant or withholding of the elector's franchise as a means to induce persons to learn the English language. We do not challenge the power of the state to encourage and facilitate the learning of the English language by residents of the state. For that purpose the states and municipalities can and do provide free instruction in the English language for foreigners and engage in public campaigns to induce residents to learn English. However, to deny persons their constitutional right of engaging in the election of their government as a means to influence them to learn English is, we submit, a form of impermissible coercion.

In *Meyer v. Nebraska, supra*, this Court held that a state could not declare it a crime for persons to teach children a foreign language; and in *Farrington v. Tokushige, supra*, it held that the operation of a foreign language school could not be hampered by unreasonable and arbitrary regulations motivated by a desire to discourage the learning of a foreign language. In *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943), it held that the privilege of attending a free public school could not be withdrawn

It follows, therefore, that only if this Court finds by clear, cogent and convincing evidence that a person literate in a language other than English cannot intelligently exercise the ballot, can the statute assailed herein be upheld. It follows, also, that the burden of establishing this necessity is upon the state. The right of American citizens to vote in elections is a precious one, of which they should not be deprived except for the most grave reasons. It is not enough that persons literate in English *may* exercise the ballot more intelligently than those literate in Spanish. That college graduates *may* exercise the ballot more intelligently than elementary school graduates would not justify disenfranchisement of the latter. To justify the deprivation of so fundamental a right, the state must establish that such disenfranchisement is unquestionably necessary to protect the electoral process.

For the following reasons, we submit that there is no such cogent proof that literacy in English is necessarily required for intelligent exercise of the ballot as would justify the denial to so many American citizens of the fundamental democratic right to participate in the selection of their government:

1. The literacy in English qualification is barely a quarter of a century old. For a century and a half the State of New York, beginning with its Constitution of 1777, did not require literacy in English as a requisite to vote.

from children who refused to salute the flag or pledge allegiance to it. This, the Court held, was as much a form of coercion as the means employed in the *Meyer* and *Tokushige* cases. Since the legislature patently cannot coerce adult persons to learn the English language, it cannot achieve this end indirectly by withholding from them a constitutional right unless they do so.

During that period many illustrious and great persons were elected to high office in the State of New York. Three of its governors became Presidents of the United States. Certainly there is not the slightest evidence that, during this period, the fact that persons not literate in English participated in the selection of the government was in any way prejudicial to the public welfare.

2. Even today more than three-fifths of the States of the Union have no literacy qualification at all for voting. Thus, in 31 of the 50 states, one need not be literate in any language in order to cast a ballot. *Lassiter v. Northampton County Board of Elections*, *supra*, 360 U. S. at 52, n. 7. There is no reason to believe that the administration of the government and laws in these states is inferior to that in the other 19 states. Without regard to whether the requirement of literacy is reasonable, we urge that, in view of the fact that three-fifths of the states require no literacy at all, there is no clear need for the requirement of literacy in English.

It should be noted further that of the 19 states which do have a literacy requirement only 12 specify that the literacy be in English. Hence, of the 50 states in the Union, fully 38 states do not require literacy in English as a qualification for voting.

3. Whatever might be the case in respect to some rarely used foreign language, literacy in so widely used a language as Spanish assures that the Spanish-speaking voter can be fully enough familiar with the issues and candidates presented to him to make an intelligent choice.

As the United States Commission on Civil Rights has shown in its 1959 Report, p. 67, there are three Spanish-language newspapers, having a combined daily circulation of 82,000, published and distributed in New York. Two of these newspapers, *El Diario* and *El Emparcial*, have a format similar to that of the English language *Daily News*. Like the English-language prototype, the first six pages of *El Diario* and *El Emparcial* are mainly devoted to current political and civic issues. The more significant political and civic issues are explored further by featured columnists and in the editorials. Prior to September 17, 1959, *La Prensa* was much like the *World Telegram and Sun* and the *Herald Tribune* in format and coverage. Since that date the more popular tabloid form of layout has been adopted. However, the coverage is apparently as complete as before.

The Spanish newspapers use the same news services as the English press. In addition, there are a number of radio and television stations in New York regularly broadcasting news and news analyses in Spanish. These programs are listed in detail in the Spanish press.

Whatever need there may have been for literacy in English as a means of obtaining political information 40 years ago when the New York requirement went into effect, it has been largely if not completely eliminated by the advent of radio and television. In 1925, only 10% of the homes in the United States owned radio sets. By 1940, 82% owned radios, Bogart, *The Age of Television*, 10 (1956), and a study of that election concluded that "radio proved more effective than the newspaper" because of its

"face-to-face contact with the principals" and the "personal relationship" established. Lazarsfield, Berelson and Gauder, *The People's Choice*, 128, 129 (second edition 1948). In 1956, 98% of the homes in the United States owned radios and 73% owned television sets. Bogart, *supra*. The percentages are undoubtedly higher today and the influence of radio and television upon voters has dwarfed the importance of the printed word. Thus, there is even less reason today to disqualify Spanish-speaking voters and continue to deny to them a most cherished right and privileges.

B. The English Literacy Requirement for Voting Violates the Privileges and Immunities Clause of the Fourteenth Amendment.

We believe we have established that there is no such compelling need for New York's English literary requirement as to justify denial of the right to vote to a substantial number of citizens. If so, the requirement is unconstitutional either as a denial of privileges and immunities guaranteed under the Fourteenth Amendment or as an impairment of a liberty protected by that Amendment's Due Process Clause. We deal with the latter concept below. Here, we urge that this Court reach the suggested result under the Privileges and Immunities Clause, overruling to whatever extent necessary its decision in the *Slaughter-House Cases*, 16 Wall. 37 (1873). We submit that the time has come to take that step toward restoration of the full intended effect of the Fourteenth Amendment.

"Unique among constitutional provisions, the privileges and immunities clause of the Fourteenth Amendment" en-

joys the distinction of having been rendered a 'practical nullity' by a single decision of the Supreme Court rendered within five years after its ratification." *Library of Congress Edition of the Constitution* (1964), pp. 1075-1076. This came about because the Court interpreted the clause as limited to the protection of those privileges and immunities "which owe their existence to the Federal government, its National character, its Constitution, or its laws." *Slaughter-House Cases*, *supra*, at 79.

As has often been noted, this restrictive interpretation of the Clause makes it completely superfluous. Privileges and immunities so limited are already protected by the Supremacy Clause and by the Federal Government's inherent power to protect its own processes and institutions. *McCulloch v. Maryland*, 4 Wheat. 316 (1819). The decision in the *Slaughter House Cases* sets forth among the examples of privileges which owe their existence to the National Government access to the Federal Courts. But can there be any doubt that, were there no Fourteenth Amendment, this Court would hold unconstitutional a law passed by a jealous state making it a criminal offense for its citizens to resort to the Federal courts for judicial redress of their grievances?

In *United States v. Aaron Burr*, 4 Cranch 470, 482, the greatest of Chief Justices noted that, "Every opinion to be correctly understood ought to be considered with a view to the case in which it was delivered." An examination of the circumstances surrounding the *Slaughter-House Cases* decision and of the later opinions of the Justices who joined in the majority and minority opinions indicates

quite clearly that the underlying motivation of the majority of the Court was to forestall use of the Amendment as a means, urged by the appellants in the case, to censor and restrict state regulation of business. The majority therefore asserted that the sole "pervading purpose" of the Amendment was to assure "the freedom of the slave race."

The expectations or hopes of the majority were doomed to frustration. In succeeding years the Amendment was used far more to protect the interests of business than the rights of the Negro race; substantive due process provided an adequate and satisfactory alternate route after the road via privileges and immunities was closed.

In any event, nullification of the Privileges and Immunities Clause is today no longer necessary. The uniform holding and tenor of the Court's decisions from *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937) to *Ferguson v. Skrupa*, 372 U. S. 726 (1963) show unmistakably that the Court has no intention to use the Fourteenth Amendment to censor State regulation of business. We submit that the time has come for the Court to restore to privileges and immunities the meaningfulness it took from it in the *Slaughter-House Cases*. To paraphrase in reverse the words of Job, what the Court has taken away, the Court can give.

Specifically, what we urge is that the right of a citizen to participate in the selection of those who govern him is a privilege of citizenship of which the Fourteenth Amendment forbids deprivation by the State in the absence of the clearest evidence that deprivation is required to pro-

tect a paramount societal interest and that there is no available alternative to protect the interest.

Nor should the Court be deterred by undue concern for an extreme interpretation of the limitations imposed by the principles of federalism. Federalism is a means, not an end, and where federalism stands in the way of assuring to citizens their inalienable right to participate in the selection of their governors, it is federalism rather than the right which should yield ground. This, in any event, was the entire *raison d'être* of the Fourteenth Amendment, as this Court has recognized in innumerable decisions.

Should, however, the Court decide that it cannot go so far, we submit that the same result be reached by a narrower interpretation of the Privilege and Immunities Clause, one fully consistent with the restrictive interpretation in the *Slaughter-House Cases* as further interpreted in *Twining v. New Jersey*, 211 U. S. 78, 97 (1908). Insofar as elections to Federal office are concerned, it is hardly contestable that the right to participate therein owes its existence to the national government. If, as this Court held in *Hague v. C. I. O.*, 307 U. S. 496 (1939), freedom to use municipal streets and parks for public discussion of a law enacted by Congress is a privilege or immunity which owes its existence to the national government, certainly so too is the freedom to participate in the election of members of the Congress that enacts the law. Hence, at the very least, the Court should hold the New York law unconstitutional in respect to elections for the President and members of Congress.

However, we urge the Court to go further. We submit that the powers and functions of a state legislature are so inextricably related to the national government that a deprivation of the right to vote for members of the state legislature impairs privileges and immunities protected by the Fourteenth Amendment. We note, for example, that when a state legislature passes upon a resolution to amend the Federal Constitution, it is exercising a power and responsibility which is derived from the national government through the national Constitution. *Hawke v. Smith*, 253 U. S. 221 (1920); so, too, when it prescribes the rules and regulations for primaries at which candidates for Federal office are selected (*Smith v. Allwright*, 321 U. S. 649 (1944)), or when it apportions districts from which members of the House of Representatives are elected (5 Stat. 491 (1842)); *Wesberry v. Sanders*, 376 U. S. 1 (1964), or when it calls upon the national government to protect it against domestic violence (U. S. Constitution, Article IV, Sec. 4).

Nor is this interdependency of Federal and State governmental functions limited to the legislature. The right of a state governor to demand extradition from another state has its source in the Federal Constitution (Article IV, Sec. 2), as has the right to call upon the national government for protection against domestic violence (*Id.*, Sec. 4).

Even the state judiciary exercises powers whose source is in the national government. Its judicial proceedings are accorded extraterritorial effectiveness only by reason of the Full Faith and Credit Clause of the National Constitution (Article IV, Sec. 1).

Finally, we note the many and ever-increasing instances of what has been called cooperative federalism—the joint efforts of the national government and the states in achieving such common objectives as security against want in old age or in unemployment or extended education on the elementary, secondary and college level or provision for the ill and physically injured who require hospital care.

These and many other instances can be cited in support of our basic proposition—that the Federal and state governments are so inextricably interrelated and interdependent that deprivation of the right to participate in the selection of state government directly and inevitably impairs privileges and immunities whose source is in the national government.

C. The English Literacy Requirement for Voting Violates the Due Process Clause of the Fourteenth Amendment.

Finally, we submit that the result urged herein can be achieved under the Due Process Clause of the Fourteenth Amendment. Ever since *Gillow v. New York*, 268 U. S. 652 (1925), this Court has recognized that the term “liberty” in the Fourteenth Amendment encompasses much more than freedom from physical restraint, and includes the fundamental freedom upon which our democratic society rests. Can it be doubted that if “liberty” includes freedom of speech, press and assembly, it also includes freedom to chose those who exercise the compulsory powers of government? Is not a major reason for freedom of expression that it ensures intelligent and responsible choice in the selection of those who exercise their just powers by reason of the consent of the governed? What

does it profit a Spanish-speaking Puerto Rican that he has the right to hear all views on public issues if he is barred from exercising the right of suffrage on the basis of conclusions reached after constitutionally-protected exposure to these views? Freedom of speech would be an illusory right if the listeners were forbidden to act upon what they heard.

Of course, due process extends beyond "citizens" to "persons." We do not here contend that restricting the ballot to citizens unconstitutionally deprives non-citizens of their liberty under the Fourteenth Amendment. Only such deprivations as are "without due process of law" are forbidden by the Amendment, and it may well be held that a requirement of citizenship is within the purview of due process. We urge only that, for the reasons heretofore stated, disenfranchisement of citizens who are literate, though in a language other than English, does constitute a deprivation of liberty without due process of law.

POINT TWO

The New York requirement of literacy in English is not one reasonably related to any valid Constitutional purpose but was intended to and has the effect of discriminating against an isolated minority group in violation of the Fourteenth and Fifteenth Amendments.

In Point One, we have assumed that the English literacy requirement was in fact adopted by New York State for the purpose of insuring intelligent voting, arguing only that no sufficient case could be made for limiting the

franchise in this fashion. We here urge that the requirement is in fact a restriction aimed at specified groups in the population and, as such, is a violation of the Equal Protection Clause of the Fourteenth Amendment and the prohibition of discrimination based on race or color in the Fifteenth.

**A. Limitations on the Power of the State
to Restrict the Right to Vote**

Although a state may within certain limitations prescribe the qualifications of voters as provided by the Constitution of the United States, Article I, Section 2, the basic right to vote, at least in general elections, is not derived from state law but is "a right secured by the Constitution." *Smith v. Allwright*, 321 U. S. 649, 662 (1944). See also, *U. S. v. Classic*, 313 U. S. 299 (1941); *Wiley v. Sinkler*, 179 U. S. 58 (1900); *Ex parte Yarbrough*, 110 U. S. 651 (1884). There are several qualifications that a state may not require of voters. Race, color, or previous condition of servitude as well as sex are specifically barred as permissible standards by the Fifteenth and Nineteenth Amendments. Nor may a state prescribe qualifications which contravene the Equal Protection Clause of the Fourteenth Amendment. *Nixon v. Herndon*, 273 U. S. 536 (1927); *Nixon v. Condon*, 286 U. S. 73 (1932). "The traditional test under the Equal Protection Clause has been whether a State has made 'an invidious discrimination,' as it does when it selects 'a particular race or nationality for oppressive treatment.' See *Skinner v. Oklahoma*, 316 U. S. 535, 541 * * *." *Baker v. Carr*, 369 U. S. 186, 244 (1962) (concurring opinion). Thus, while a state has the lawful power to alter its subdivisions, if in doing so it

singles out a readily isolated segment of a racial minority for special discriminatory treatment it violates the Federal Constitution and its otherwise lawful act is overcome by the prohibitions contained therein. *Gomillion v. Lightfoot*, 364 U. S. 339 (1960).

B. The Discriminatory Intent and Effect of the New York English Literacy Requirement

A proposal that the right to vote in New York State be limited to those literate in English was proposed at a Constitutional Convention held in 1915. After full debate, which is a matter of public record, the proposal was defeated. Nevertheless, it was renewed at the 1917 session of the New York State Legislature and was approved by both chambers. N. Y. L. 1917, pp. 2785, 2786. It was passed again at the 1919 session of the Legislature (N. Y. L. 1919, pp. 1790, 1791), and was placed on the ballot for popular vote in the 1921 election. It was approved by the voters that year. N. Y. L. 1922, p. 1849.

Although the constitutional provision imposing a literacy test was defeated at the 1915 Constitutional Convention, the debates at the sessions of that body are the best available evidence of the basis on which the case for the proposal rested. (There is no public record of the debates in the New York State Legislature.)

The provision requiring literacy in "the mother-tongue" was first proposed at the Convention by Charles H. Young who said, in support of the amendment:

More precious even than the forms of government are the mental qualities of our race. While those stand

unimpaired, all is safe. They are exposed to a single danger, and that is by constantly changing our voting citizenship through the wholesale, but valuable and necessary infusion of *Southern and Eastern European races* * * * The danger has begun * * * We should check it * * *. 3 *New York State Constitutional Convention* 3012 (revised record of 1916) (emphasis added).

The level of the arguments in favor of the proposal is illustrated by the remarks of Gordon Knox Bell, who said:

Gentlemen, we must stop to think of what we are. This is not a question of nations, *it is a question of races*, and when all is said and done, there is not a man in this room who dares deny that we are *an English race*, born and bred and brought up with the traditions of the men of England; of *Anglo-Saxon stock*. *Id.* at 3015 (emphasis added).

Mr. Bell traced the history of the settlement of England and, although denying that he was an "Anglo-maniac," concluded after an astounding outburst, that if there were any greater word than "Englishman" it must be the word which signifies that heritage as embodied in our language. *Id.* at 3015-17.

The proposal was recognized as an attempt to prevent the assimilation of "alien blood" into the supposedly pure Anglo-Saxon heritage of the nation by segregating and excluding foreign-born Americans from the rights, privileges and opportunities of full citizenship. Its proponents impugned the patriotism of Yiddish-speaking citizens and demeaned almost every national group other than the

English. In opposition to the proposal, Mr. Nathan Burkan made the following plea:

The highest and most priceless privilege of a citizen is the right to participate and have a voice in the government—the right to vote for all officials and for the adoption and rejection of fundamental laws.

* * *

It is abhorrent to believe that those who toil by the sweat of their brows, who create and improve prosperity, who aid in the development of the great resources of this state and in the building up of its industries and commerce shall be disfranchised because they cannot comply with an irksome test. *Id.* at 3152-53.

Robert F. Wagner, late United States Senator from New York, said of the proposed requirement:

* * * Obviously that proposal is directed against the foreign born American. Remembering that the great mass of foreigners that come annually to our shores are assimilated into and become part and parcel of the American people because they strive and hope and succeed in acquiring the right to vote, can you not recognize in the amendment a clandestine effort to prevent this assimilation of alien blood into our citizenship and to segregate and exclude the foreigner from the rights, the privileges and the opportunities which we have always held out to all men?

* * *

[I]n so far as you dare to go, you take from [the foreigner] the opportunity and the privileges which your ancestors enjoyed when they like the immigrants of today found in this land a refuge from the very spirit of intolerance and hate which finds expression in this amendment. *Id.* at 3022-23.

In short, the case for the voting restriction was strikingly similar to that made, during this period, in Oregon for a statute prohibiting instruction of children in a foreign language—that that practice was “inimical to our own safety” because the children would “always think in that language.” *Meyer v. State*, 107 Neb. 657, 187 N. W. 100 (1922). That decision, of course, was reversed by this Court. *Meyer v. Nebraska*, 262 U. S. 390 (1923).

The period during which the constitutional provision was thereafter approved by the Legislature and the voters, during and after World War I, was marked by inflammation of national hatred of minority groups, particularly aliens and recent citizens of foreign extraction. The end of hostilities did not stem the tide. In addition to the enactment and enforcement of various sedition, anarchy and criminal syndicalism laws, there was widespread interference with free expression in the form of seizures of newspaper files, restrictions on mailing rights and prosecutions of educators and others for “disloyal language.” This period also saw the enactment of the national immigration law establishing the offensive national origins quota (recently repealed), legislation presaged by the mass deportations of aliens without even a semblance of due process, characterized by Professor Zechariah Chafee as “wholesale deportation for ideas.” Chafee, *Free Speech in the United States* 237 (1948). The free speech controversy during the war and the restrictive legislation following the war led Charles Evans Hughes to wonder “whether constitutional government as heretofore maintained in this republic could survive another great war even victoriously waged.” *Id.* at 102.

Oregon enacted legislation outlawing all private and parochial schools. Several states, like Nebraska, passed laws making it a crime to teach foreign languages, or to teach any subject in a foreign language, to children in grade school. In New York, six of twelve laws characterized as affecting freedom of speech were enacted during the period 1917 to 1921. *Id.* at 590-91. The mayor of the City of New York, after the Armistice of 1919, banned the performance of operas in the German language. *Star Opera Co. v. Hylan*, 109 Misc. 132, 178 N. Y. S. 179 (1919).

But it was the Legislature of New York, during the very period in which it submitted the English literacy requirement for adoption, that most vividly displayed hostility to the "foreign-born" in its notorious expulsion of the five lawfully elected Socialist assemblymen in 1920—truly a repudiation of government by representation and the disfranchisement of the assemblymen's constituents. At a hearing likened to the Salem witch trials, amid testimony involving a "little red book" in Yiddish and a fantastic story by a young girl that one of the five had "spit upon the American flag," the speaker of the New York State Assembly charged that the Socialist Party was "not truly a political party, but is a membership organization admitting within its ranks aliens, enemy aliens and minors." Despite vigorous editorial comment branding the action of the assembly a "legislative lynching," the powerful forces spawned by extreme chauvinism and xenophobia marched onward. See Chafee, *op. cit. supra* at 278-79; Waldman, *Albany: The Crisis in Government* xvi, xvii, 4, 25-27, 40-42 (1920).

The fact that New York's English literacy requirement was not in fact designed to advance intelligent voting is shown not only by its history and background but also by the arbitrary and unreasonable nature of some of its provisions. If actually aimed at assuring that voters have the ability to acquire information about elections, why should New York require that persons be able to *write* as well as read English? The only writing necessary properly to exercise the franchise of voting involves simply the writing of one's own name. Must a person be able to communicate election information to others in order to be able to vote intelligently? Furthermore, an exception is made for all persons who cannot read or write English because of physical handicaps and also for veterans. Election Law, Sections 155, 168(6), 201. The ability of such persons to acquire information about elections is, in many cases, substantially less than that of persons literate only in Spanish. These exceptions, we submit, buttress the conclusion that the thrust of the voting restrictions is to penalize persons whose native language is other than English.

Another indication that the New York literacy-in-English requirement was enacted for an unlawful and unconstitutional purpose rather than as a bona fide attempt to assure an informed electorate is the "Grandfather Clause" contained in the provision of the New York constitution which establishes the test. This aspect of the law is discussed in detail in the next section of this brief as an independent reason for invalidating the test. It is, however, pertinent to note here this added indication that the clause, as written, represents an unreasonable requirement enacted for an unconstitutional purpose.

C. A State Literacy Test Which is Intended to and is Effective to Discriminate Against National Origin Groups is Unconstitutional.

For the purposes of this aspect of this brief, we do not contend that a literacy test may never be justified as a reasonable attempt to assure an independent and intelligent electorate. *Cf. Lassiter v. Northampton County Board of Elections, supra; Stone v. Smith*, 159 Mass. 413, 34 N. E. 521 (Mass. 1893). However, if state legislation establishing such a test is on its face merely a device to effect prohibited discrimination or, though fair on its face, may be or is employed to perpetuate discrimination, it is unconstitutional. *Davis v. Schnell*, 81 F. Supp. 872 (S. D. Ala.), *aff'd mem.*, 336 U. S. 933 (1949). *Cf. Lassiter, supra*, 360 U. S. at 50, 53. Nor is a literacy test valid if literacy is "used as a cloak to discriminate against one *class* or *group*." *Gray v. Sanders*, 372 U. S. 368, 379 (1963) (emphasis added).

In *Pope v. Williams*, 193 U. S. 621 (1904), which upheld the reasonableness of a non-discriminatory residence requirement, this Court noted that the situation would be different where a statute presented a possibility of violating the Federal Constitution. Interestingly, the hypothetical situation there contemplated as an example of an "extreme case"—discrimination between persons coming from different states (i.e. Georgia and New York)—is similar to the instant case where the proscription, in its operation, necessarily discriminates against persons coming from Puerto Rico where Spanish is the native language as against persons coming from the United States mainland. The New York Legislature has singled out United States

citizens of Puerto Rican origin and other later-arriving "foreigners" who are literate only in Spanish—a readily isolated minority group living in a localized area under marginal conditions—and has deprived them of the vote, one of their strongest weapons for improving their lot and equalizing their opportunities. *Cf. Carrington v. Rash*, 380 U. S. 89 (1965); *Mabry v. Davis*, 232 F. Supp. 930 (W. D. Tex. 1964).

The words "race" and "color" as used in the Fifteenth Amendment are not to be confined to a narrow, technical meaning. They include nationality groups, such as non-English speaking persons of Puerto Rican origin. See *Comacho v. Rogers*, 199 F. Supp. 155, 160 (S. D. N. Y. 1961). The proponents of the New York constitutional provision here in question referred to such nationality groups as "races," and the requirement of English literacy was intended to discriminate on the basis of "race" in violation of the Fifteenth Amendment.

In any event, discrimination based upon either "race or place of origin" is unconstitutional. See *Wright v. Rockefeller*, 376 U. S. 52, 58 (1964). The dissenting opinion in the lower court in that case is particularly illuminating:

* * * the above uncontradicted picture establishes *per se* a *prima facie* case of a legislative intent to draw congressional district lines * * * on the basis of race and national origin. To me it fits four square with Mr. Justice Frankfurter's statement in *Gomillion v. Lightfoot* * * * that the act in question was not an ordinary geographical re-districting measure even with the familiar abuses of gerrymandering. Although

Justice Frankfurter's statement referred to the court's holding that there was a violation of the fifteenth amendment this statement is equally apposite to the equal protection clause of the fourteenth amendment under *Brown v. Board of Education* * * * Cf. the concurring opinion of Mr. Justice Whittaker in *Gomillion* at 349 * * * The conclusion here is, as in *Gomillion*, irresistible, tantamount for all practical purposes, to a mathematical demonstration that the legislation was solely concerned with segregating white, and colored and Puerto Rican voters * * *

* * *

* * * The pattern * * * shows that they were drawn so that any district lines encompassing these areas would *necessarily include a very high percentage of non-whites and Puerto Ricans* * * *

We are told that the fifteenth amendment nullifies sophisticated as well as simple-minded discrimination. In my judgment the New York legislature has attempted, in violation of the equal protection clause of the fourteenth amendment, a sophisticated and subtle discrimination * * * *Wright v. Rockefeller*, 211 F. Supp. 460, 472-75 (S. D. N. Y. 1962) (dissenting opinion) (emphasis added).

In several recent cases, the federal courts have stricken down discriminatory applications of voting requirements by the states. See *U. S. v. Clement*, 231 F. Supp. 913 (W. D. La. 1964); *U. S. v. Palmer*, 230 F. Supp. 716 (E. D. La. 1964). A literacy test designed and used to discriminate against Negroes was held to violate the Fourteenth and Fifteenth Amendments. *U. S. v. Louisiana*, 225 F. Supp. 353 (E. D. La. 1963), affirmed, 380 U. S. 145 (1965). Where the purpose and effect of state requirements are to discriminate, the law is unconstitutional and the *motive*

of the legislators in enacting the law is of importance in making such determination. See *U. S. v. Mississippi*, 229 F. Supp. 925, 982 (S. D. Miss. 1964) (dissenting opinion), *reversed*, 380 U. S. 128 (1965). The *Lassiter* case does not hold that a literacy test chosen to *deny*, not grant, voter privileges is free from attack.

It may be that a state can constitutionally use a literacy test to attempt to assure that all voters are capable of becoming sufficiently informed to make a considered judgment when they cast their ballots. At the other end of the spectrum, it is clear that a voter qualification test designed to weed out persons who would tend to vote certain beliefs or favor certain persons or political parties is unconstitutional. *Carrington v. Rash*, *supra*, 380 U. S. at 94 (1965). Thus, a test barring persons who are wholly illiterate could more easily be justified than, say, an IQ test. Certainly, an IQ test with a minimum passing score of 120 established on the theory that only such exceptional persons can "properly" cast their ballots is repugnant to democratic principles and unconstitutionally discriminatory as well. If a Southern state were to conduct a survey of its population with respect to certain criteria which have been held individually to constitute valid limitations on the right to vote (e.g. one-year residence in the state, literacy, no felony convictions) and then enacted those requirements which, according to its survey, would disfranchise a maximum number of Negroes while permitting a maximum number of whites to vote, would not this Court strike down the plan?

While the New York legislators were not as blunt as members of the Constitutional Convention which enacted

the Louisiana literacy test (see *U. S. v. Louisiana, supra*, 225 F. Supp. at 373, 374), the debates referred to above leave little doubt that the basic motive and purpose behind the enactment of the New York English literacy test was to deprive later-arriving immigrants of their vote. The Puerto Rican influx had not yet begun at the time the New York test was enacted and, if there was any particular group at which the test was aimed, it was probably the large Yiddish-speaking community. Due to unforeseen circumstances, the most effective deprivation now occurs not with respect to immigrants but to native American citizens of Puerto Rican origin who have migrated to New York, although there are also a number of American citizens of the Jewish faith who are still disfranchised by the requirement of English literacy.

Both the intent of the legislation and its actual effect are important fields of inquiry in order to determine whether it is constitutional. See *Oyama v. California*, 332 U. S. 633, 651 (1948) (concurring opinion). In the *Oyama* case, Justice Murphy noted that the legislation in question was "spawned of the great anti-Oriental virus" that infected the nation at the time. *Id.* at 651. The New York English literacy test was spawned from an invidious anti-foreigner virus and the victimized class will "necessarily include a very high percentage of Puerto Ricans" as in *Wright v. Rockefeller, supra*. It is an unreasonable restriction enacted for the unlawful purpose of discriminating against non-English-speaking persons by depriving them of the right to vote.

POINT THREE

The New York English literacy requirement is an unconstitutional "Grandfather Clause" clearly violative of the Fourteenth and Fifteenth Amendments to the Federal Constitution.

The New York constitution excludes from the requirement of literacy in English all persons who were "entitled to vote by attaining majority, by naturalization or otherwise" prior to January 1, 1922. Residents of New York possessing all the qualifications of voters prior to that date but who have never exercised their right to vote are, nonetheless, exempt from the literacy test. *Ferayorni v. Walter*, 121 Misc. 602, 202 N. Y. S. 91 (1923). However, any person who establishes residence in New York after that date must prove his literacy in English. Op. Atty. Gen., 48 St. Dept. 179 (1933). Thus, American citizens of Puerto Rican origin, even native-born citizens like appellant, who had not established residence in New York prior to 1922 have not been able since that date to register and vote in New York (although they may have voted in elections in the United States for many years) if they are literate only in Spanish, the language native to their place of birth and education in the United States. By contrast, persons who were merely eligible to vote in New York prior to 1922, although wholly illiterate, have been *and are today* eligible to vote. Special assistance may be rendered only to such illiterates who "became entitled to vote on or before January first, nineteen hundred twenty-two." Election Law, Sections 169, 199.

Any possibility that the cutoff provision was reasonably related to a valid administrative purpose is negated by the wholly unjustified breadth of the exemption (see e.g., Election Law, Sections 155, 168(6)) and the unwarranted inclusion in the exempt class of all persons then eligible to vote although they had never voted and might not first register until many years after the literacy requirements were in effect.

In *Guinn v. United States*, 238 U. S. 347 (1915), this Court struck down a state-imposed prerequisite for voting which required a literacy test in English for all residents of Oklahoma except any person "who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government or who at that time resided in some foreign nation and (any) lineal descendant of such person." Although aimed at excluding later-arriving foreigners, not a minority group already residing within the state, in all material particulars the New York test shares the fatal defects of the Oklahoma legislation.

One of the bases of the *Guinn* decision was the pattern of discrimination established by the legislation. This Court there adopted the description of the statute given by the Solicitor General (238 U. S. at 352, 364):

The necessary effect and operation of the Grandfather Clause is to exclude practically all illiterate Negroes and practically no illiterate white men, and from this its unconstitutional purpose may legitimately be inferred.

• • •

In practical operation the amendment inevitably discriminates between the class of illiterate whites and illiterate blacks as a class to the overwhelming disadvantage of the latter.

In 1957, a Grandfather Clause similar to the one considered in *Guinn*, but which required that, to be exempt from the special voting prerequisites, a person must have been permanently registered to vote prior to 1908, was declared clearly violative of the Fourteenth and Fifteenth Amendments to the United States Constitution. *Lassiter v. Taylor*, 152 F. Supp. 295, 297 (N. C. 1957). When the matter reached this Court, the Grandfather Clause had been repealed but this Court observed (360 U. S. at 49-50):

Appellant points out that although the cut-off date in the grandfather clause was December 1, 1908, those who registered before then might still be voting. If they were allowed to vote without taking a literacy test and if appellant were denied the right to vote unless she passed it, members of the white race would receive preferential privileges contrary to the command of the Fifteenth Amendment. * * *

In New York today there are persons 65 years old and older who may vote (even if for the first time) without taking the literacy test whereas appellant and a substantial number of other persons similarly situated may not vote unless they pass a test measuring literacy in English, *the exact form of preferential privilege* which this Court held clearly unconstitutional in the *Guinn* and *Lassiter* cases. That the discrimination is based upon "place of origin" rather than race is irrelevant. See *Wright v. Rockefeller*, 376 U. S. 52, 53 (1964).

While the provision exempting "lineal descendents" was significant and gave rise to the "grandfather" designation, the cases do not limit their reasoning to clauses containing such a provision. In addition to emphasizing the pattern of discrimination between voters similarly situated, this Court in *Guinn* noted that the legislation (238 U. S. at 364-5):

* * * contains no express words of an exclusion from the standard which it establishes of any person on account of race, color or previous condition of servitude prohibited by the fifteenth amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the 15th amendment and makes that period the controlling and dominant test of the right of suffrage.

The New York situation is similar. At the cutoff date there were relatively few Puerto Ricans or other non-white, foreign-speaking persons in New York who could qualify to vote by virtue of the exemption of then-eligible voters. The timing of the English literacy requirement was, as we have seen, for the purpose of excluding the expected influx of non-English "races." It was also provided by statute that a certificate or diploma evidencing completion of the 8th grade in a school in which English is the language of instruction is acceptable proof of literacy. Election Law, Section 168. This latter provision virtually assures that all persons educated on the United States mainland, where compulsory education in the English language is the rule, will be eligible to vote although a substantial number may be functional illiterates. Thus, the pattern of invidious discrimination established by the Grandfather Clause is continued and reinforced.

That the original discriminatory purpose for enacting the New York clause was not directed against the particular group which is most directly affected by the resultant legislation is of no consequence. Quoting directly from *Guinn*, but substituting "Puerto Ricans" for "Negroes," it is clear that the New York Grandfather Clause excludes "practically all illiterate [Puerto Ricans] and practically no illiterate white men, and from this its unconstitutional purpose may legitimately be inferred." *Guinn v. U. S.*, *supra*, at 352. It "discriminates between illiterate whites and illiterate [Puerto Ricans] as a class, to the overwhelming disadvantage of the latter." *Ibid.* Despite the absence of "express words of an exclusion from the standard which establishes it of any person on account of" prohibited grounds, "the standard itself inherently brings that result into existence." *Id.* at 364, 365.

A state undoubtedly has power to enact stricter voter requirements. However, any new requirement must be truly prospective and free from any resultant discrimination against racial or ethnic groups, especially where it can fairly be said that such discriminatory effect (or a similar effect) was the purpose of the enactment.

* * * on a subject like the one under consideration involving the establishment of a right whose exercise lies at the very basis of government a much more exacting standard is required than would ordinarily obtain. * * * *Id.* at 366.

As in the *Guinn* case, the whole of the one-sentence New York constitutional provision regarding literacy in English must fall as an unconstitutional Grandfather Clause.

Conclusion

In *Meyer v. Nebraska*, *supra*, this Court said (262 U. S. at 401):

The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means. (Emphasis added.)

We submit that, to appellant and other Americans who were not “born with English on the tongue,” the “protection of the Constitution” means little if they are not allowed to vote. The provisions in the New York State Constitution and the Election Law imposing literacy in the English language as a prerequisite for voting and barring from the ballot persons completely literate in another language should therefore be held unconstitutional and the decision of the court below should be reversed.

Respectfully submitted,

HOWARD M. SQUADRON

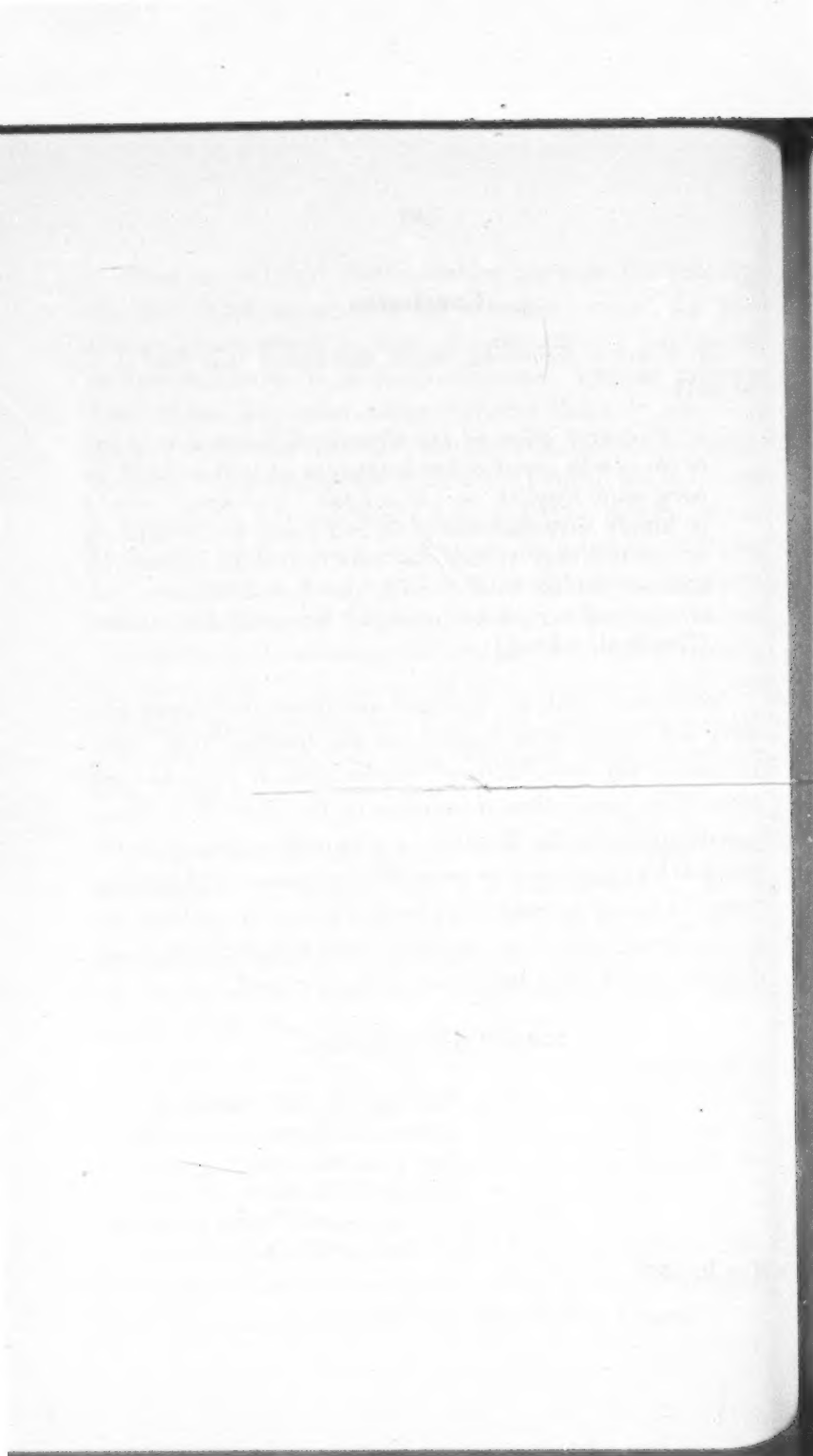
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March, 1966.



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IN THE
Supreme Court of the United States
OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J.
O'ROURKE and JOHN R. CREWS, Members of and con-
stituting the Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General
of the State of New York,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK

BRIEF FOR INTERVENOR-APPELLEE

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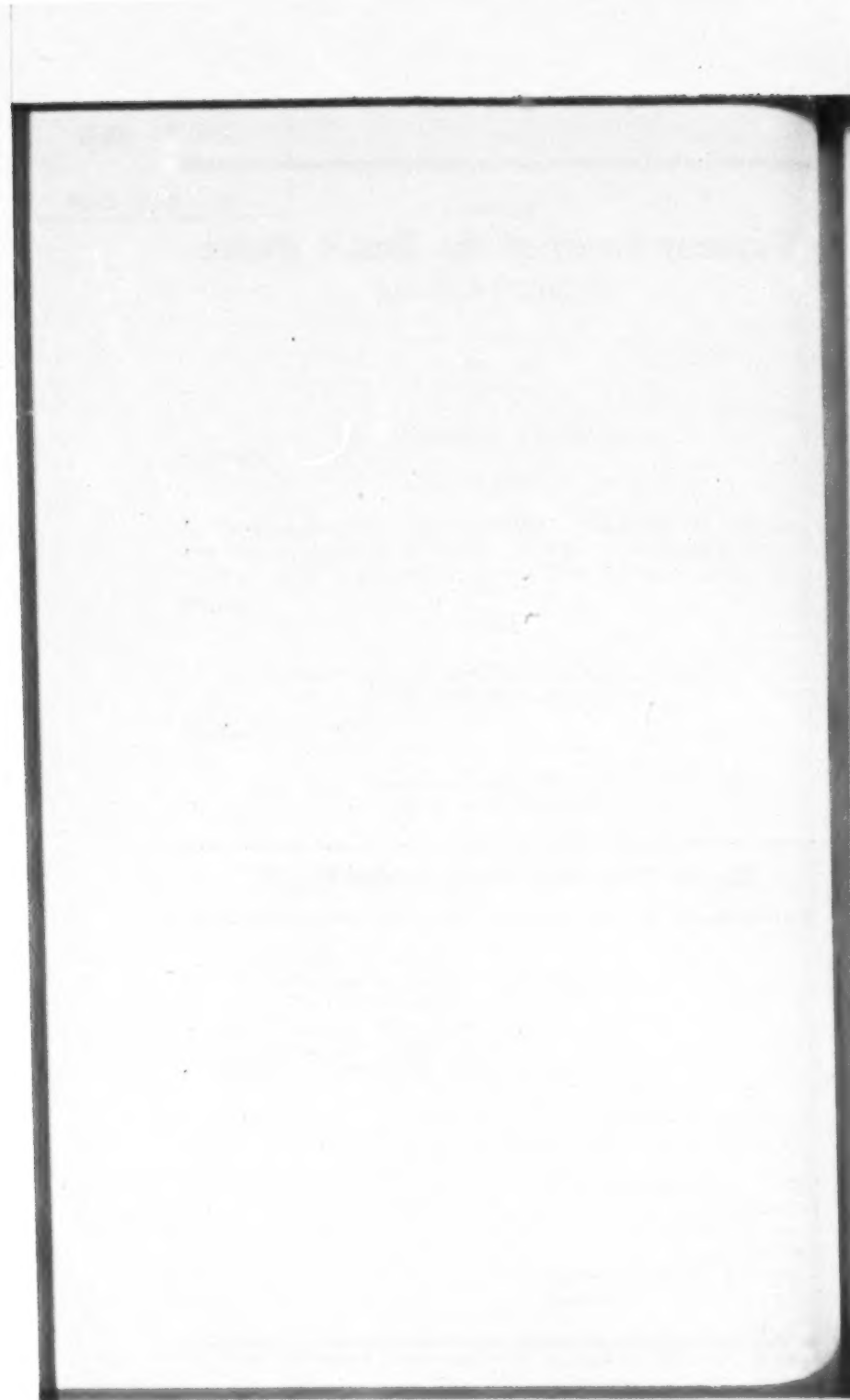
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General of the
of New York,

Intervenor-Appellee.

BRIEF FOR INTERVENOR-APPELLEE

Preliminary Statement

Appellant challenges the constitutionality of the New York State Constitution and Election Law insofar as they provide that she must fulfill an English language literacy qualification in order to vote. She contends that alleged exceptions from the English literacy standard of certain

groups of which she is not a member void the provision; that, because she is a United States citizen, she is entitled to vote without taking such a test, and that the United States, by treaties and statutes extending citizenship to Puerto Ricans, and by its commitment to the United Nations, has precluded the establishment of an English literacy qualification for persons born in Puerto Rico.

On March 12, 1964, the New York Supreme Court, New York County (GREENBERG, J.), dismissed her application for an order that she be given a literacy test in Spanish or that she be enrolled as a voter without a test (R. 37-38). The New York Court of Appeals affirmed the decision by a vote of 4-3 on May 27, 1965 (R. 40-41). The remittitur was amended to show that questions under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution had been passed upon (R. 44-45) and to show that questions under Article IV, §§ 2 and 4 and Article VI, § 2 of the Constitution had been passed upon (R. 46-47). This Court noted probable jurisdiction on January 24, 1966 (R. 52).

Opinions Below

The opinion of the Supreme Court, New York County (R. 37-38), is reported in the New York Law Journal, March 17, 1964, page 14, col. 5. The order of affirmance of the Court of Appeals is reported at 16 N. Y. 2d 639, 209 N. E. 2d 119, 261 N.Y.S. 2d 78 (R. 40). The dissent is also reported at 16 N. Y. 2d 639, 209 N. E. 2d 119, 261 N.Y.S. 2d 78 (R. 40-41). The first amendment to the remittitur is reported at 16 N. Y. 2d 708, 261 N.Y.S. 2d 900 (R. 44-45). The second amendment to the remittitur is reported at 16 N. Y. 2d 827, 263 N.Y.S. 2d 168 (R. 46-47).

Jurisdiction

Appellant has invoked the jurisdiction of the Court under 28 U.S.C. § 1257(2).

New York Law Involved

New York State Constitution, Article II, § 1 (Appellant's Appendix, p. 1a).

New York State Election Law, Sections 150, 155, 168 and 201 (Appellant's Appendix, pp. 1a-8a).

Questions Presented

1. Is New York State's provision that, in order to vote, its citizens must be able to read and write a minimal amount of English unreasonable within the meaning of the equal protection clause of the Fourteenth Amendment, although the provision embodies a permissible state policy, it is applied in a fair manner and it was not passed with a discriminatory purpose?

2. Is New York State's provision that, in order to vote, its citizens must be able to read and write English unreasonable as to appellant, a citizen of New York State, by virtue of her birth as a citizen of the United States or by virtue of her literacy in a language other than English?

3. Does New York State, in exempting from the English literacy voting qualification persons who became eligible to vote prior to the effective date of the qualification, and in providing that certain groups of citizens may, in lieu of taking an English literacy test, present other proof of such literacy, violate any right of appellant under the equal protection clause of the Fourteenth Amendment?

4. Can United States treaties and statutes relating only to the insular government of Puerto Rico abrogate the constitutional power of New York State to set reasonable voter qualifications for its own citizens?

Statement of the Case

According to her petition (R. 2-12), appellant Martha Cardona was born in Puerto Rico in 1923. She attended school there for an unspecified number of years and she alleges that the classes were taught in the Spanish language (R. 3). She further alleges that she has lived in New York City since 1948 and that she can read and write Spanish but cannot read and write sufficient English to pass the New York literacy test (R. 3, 4). On July 23, 1963, appellant appeared before the Board of Elections of the City of New York and presented proof of her age, citizenship and residence. Pursuant to statutory requirements, the Board of Elections requested that she take the Board of Regents literacy test.* She, however, demanded a test in Spanish. In the absence of such a test in the Spanish language, and in the face of her refusal even to *take* a test in English, the Board of Elections could not and did not enroll her as a voter (R. 3-4).

Appellant then commenced a proceeding in Supreme Court, New York County, pursuant to Article 78 of the New York Civil Practice Law and Rules, for an order directing the New York City Board of Elections to register her as a duly qualified voter or, in the alternative, directing the Board to administer to her a literacy test in the Spanish language and, upon her passing such a test, to register her as a duly qualified voter. She contended that those provisions of New York law which required her to demonstrate English literacy in order to vote were discriminatory and therefore unconstitutional. The contention was denied in the answer of the Attorney General (R. 17).

The application was denied and the petition dismissed on March 12, 1964 (GREENBERG, J.), on the authority of

* The preparation of the English literacy test in New York is the responsibility of the Board of Regents and not the Board of Elections (Election Law, § 168 [1]).

Camacho v. Doe, 31 Misc. 2d 692, 221 N. Y. Supp. 2d 262 (Sup. Ct. Bronx Co. 1958), *aff'd* 7 N. Y. 2d 762, 163 N. E. 2d 140 (1959); *Camacho v. Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961) and *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45 (1959). On direct appeal to the New York Court of Appeals, the decision was affirmed on May 27, 1965 (16 N. Y. 2d 639). The remittitur was amended to show that questions under the Fifth, Fourteenth and Fifteenth Amendments had been passed upon (16 N. Y. 2d 708) and to show that questions under Article IV, §§ 2 and 4, and Article VI, § 2, had been passed upon (16 N. Y. 2d 827).

The instant case arose before the passage of the Voting Rights Act of 1965. The petition does not allege facts which would bring appellant clearly within the scope of section 4(e) of that Act, although it does allege that she went to school in Puerto Rico, received instruction in Spanish and was literate in that language.* There was, of course, no occasion for the record to show that until the enactment of this provision of the Voting Rights Act.

The New York English Literacy Qualification

A. The Voting Qualification

The New York State English literacy qualification is embodied in Article II, § 1 of the New York State Constitution which provides, *inter alia*, that:

"[A]fter January first, nineteen hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such

* In appellant's brief in opposition to the motion to dismiss (p. 6), she emphasized this by stating: "Thirdly, there is nothing in the record before this Court to indicate that appellant could qualify under § 4(e) Voting Rights Act of 1965," but studiously refrained from asserting that she could not qualify under this provision of the Federal Act. We still suggest that the appeal may be moot as we did in our brief in support of motion to dismiss (p. 12).

person is also able, except for physical disability to read and write English."

Section 150 of the Election Law, which sets forth the voter qualifications for the State, provides *inter alia*:

"In the case of a person who became entitled to vote in the state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A 'new voter' within the meaning of this article, is a person, who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight."

B. Proof of Literacy

Section 168 of the Election Law provides for the manner in which literacy may be proved. Under section 168(1) the State Board of Regents is to provide for the giving of literacy tests. In election districts requiring personal registration conclusive proof of literacy is established by "a certificate of literacy" issued to a voter under the rules and regulations of the Board of Regents. The certificate must show that the voter is able to read and write English except for physical disability and only to the extent of such disability. The certificates are to be accepted by election inspectors and central and veterans' absentee registration boards.

Section 168(1) provides further that "[l]iteracy tests may also be given by veterans' absentee registration boards to applicants for registration by such boards, except in cases where the signing of an application consti-

tutes conclusive proof of literacy as provided in section one hundred fifty-five of this chapter . . ."

Where personal registration is not required or where central or veterans' absentee registration boards have registered a voter, the election inspectors must issue a certificate of literacy to those fulfilling the same requirements as the certificate issued where personal registration is required.

Section 168 provides that proof of literacy may also be established by:

1. presentation of a certificate or diploma showing completion of the work "up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction" (Election Law, § 168[2]);
2. presentation of a certificate or diploma showing completion of the work "up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language" (*id.*);
3. presentation of "a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance" (*id.*);
4. affidavit attesting to the amount of education specified in (1), (2) or (3), *supra* and to the unavailability of the required documentary proof (*id.*);
5. naturalization as a United States citizen on or after June 27, 1952 "provided that the new voter was required to and did establish in the process of his naturalization, an understanding of the English language, including an ability to read and write and speak words in ordinary usage in the English language" (*id.*);

6. affidavit from the naturalized citizen that he acquired such an understanding of English if the election inspector is not satisfied that such an understanding was acquired in the naturalization process (*id.*);
7. a statement that he or she has previously voted a war ballot (Election Law, § 168[5]);
8. "presentation of a certificate of honorable discharge from any of the armed forces of the United States by a person who was a resident of the State of New York at the time he became a member of the armed forces" or by affidavit setting forth the facts of the honorable discharge and the unavailability of a certificate (Election Law, § 168[6]).

Section 168(3) of the Election Law provides that:

"The inability of a voter, save for physical disability only, obvious to the election inspectors to write his name in a register or poll-book, shall be deemed conclusive proof of inability to read and write English, notwithstanding the presentation of proof of literacy as herein provided."

C. Related Provisions

In order not to disenfranchise persons who, but for their legitimate inability to appear at a designated time and place, would be entitled to register and vote, the State has provided for absentee registration and voting. Such provisions necessarily raise problems of the administration of the English literacy requirement.

Thus section 153-a of the Election Law provides for absentee registration by voters who are ill or physically disabled or whose duties, occupation or business require them to be outside the state. In instances where a person may register as an absentee voter "the spouse, parent or child of such voter, accompanying, being with such voter

and thereby unable to appear personally for registration" may also register as an absentee. Election Law, § 153-a (2),(3).

"Upon receipt of such application [for absentee registration] if it appears that the applicant is a new voter and that he has not furnished proof of literacy as provided in section one hundred sixty-eight, the board of elections shall thereupon notify him of the need of producing such proof and shall furnish him with the necessary forms referred to in such section for execution and filing in lieu of producing the documents referred to in such section. The board shall also notify the board of regents of the state of New York in charge of the giving of literacy tests as required by such section and an arrangement shall be made for the giving of a literacy test to such applicant and for the issuance of a certificate of literacy under the rules and regulations of such board of regents." (Election Law, § 153-a[11]).

Section 155 of the Election Law provides for veterans' absentee registration. Under the provisions of that section an inmate or patient in a veterans bureau hospital may be registered by filling out and signing an application "from which may be determined his qualifications as a voter and the election district in which he resides." (Election Law, § 155[4]). "The signature of any new voter applying to be registered in the manner prescribed by the section shall constitute conclusive proof of his or her literacy" (Election Law, § 155[5]). Where physical disability prevents such signing, there may be administered "the oath prescribed by section one hundred sixty-nine" (Election Law, § 155[3]) and such oath "shall constitute conclusive proof of his or her literacy" (Election Law, § 155[5]). The section also provides that spouses, parents and children of such inmates who are themselves hospitalized in such institutions or who are with hospitalized vet-

erans may register under the section "if otherwise lawfully entitled thereto" (Election Law, § 155[11]).

Under section 169 of the Election Law a person, other than a new voter, who appears to register and who will require assistance in order to vote either because of illiteracy or disability must take an oath that he will require such assistance giving the specific nature of his disability and, in the case of illiteracy, stating that he became entitled to vote in New York on or before January 1, 1922.

Summary of Argument

The states have the exclusive power to set voter qualifications, the only limitation being that those qualifications must be reasonable and non-discriminatory. *Harper v. Virginia State Board of Elections*, — U. S. —, 34 U.S.L. Week, 4305 (March 24, 1966); *South Carolina v. United States*, — U. S. —, 34 U.S.L. Week, 4207 (March 7, 1966). An English literacy qualification for voting is a reasonable exercise of the right to set voter qualifications. *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45 (1959). This is especially true in New York where the ballot is long and complex. Moreover, an English literacy qualification insures that the voter can independently resolve the issues and understand the ballot without the aid of any intermediary, since English is the language in which all the business of the nation and state is conducted. The reasonableness of the requirement is evidenced by the test given in New York to determine literacy. The test, which is prepared by the Board of Regents, is a short and simple reading test requiring only enough writing to establish comprehension of the printed material. The reasonableness of the requirement is also evidenced by the fact that Congress requires English literacy for naturalization.

This reasonable literacy qualification does not become unreasonable when applied to appellant, a citizen of New

York. She is not a member of any class which is being subjected to discrimination. The fact that she learned to read Spanish does not create an obstacle to her learning enough English to pass the Board of Regents literacy test. Indeed, the opposite is true. In addition she may avail herself of the free adult education programs provided by the State. Appellant did not acquire the right to vote by virtue of her national citizenship. If this were true she would have been able to vote while in Puerto Rico in national elections. It was only when she became a resident of a state that she became even a potential voter in such elections, but she must, in order to obtain the franchise, fulfill the qualifications of her state. The fact that appellant is literate in a language other than English does not mean that New York must accept that literacy as an alternative to English literacy. Moreover, appellant is claiming a privilege accorded no other citizens or group of citizens. Nor does appellant have the great access to information about current affairs which she claims to have.

The history of the English literacy voting qualification demonstrates a concern to insure an informed electorate. The proposal at the Constitutional Convention of 1915 was a response to the growing problem of adult illiteracy and a negative reaction to a suggestion that the ballot be shortened so that the populace could understand it. It was in no way intended to discriminate against the immigrant or prevent any group from acquiring the franchise. The bill, as it was ultimately passed, was based on the same principles. From its inception the English literacy qualification for voting in New York has been complemented by programs for adult education, the first such being enacted in 1919.

The New York provision does not embody a grandfather clause since it provides only for a beginning date and omits a grandfather and lineal descendants. There are no exceptions to the English literacy qualification in

New York and in any event, exceptions would not automatically establish the unreasonableness of the qualification itself. Appellant's final reliance on treaties and statutes of the United States dealing with voting rights of persons in Puerto Rico to vote in Puerto Rico, have no extra-territorial effect and indeed, some were passed after appellant left Puerto Rico.

Appellant is not a citizen of Puerto Rico. She is a citizen of New York. She acquired no rights in Puerto Rico which entitle her to avoid New York's voter qualification of English literacy and she was burdened with no disability which prevents her from fulfilling that qualification like every other citizen of the state wherein she resides.

POINT I

The New York English literacy requirement is reasonable and does not deprive appellant of any right under the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

Because the establishment of voter qualifications is the province of the states (U. S. Const. Art. 1 § 2; *Harper v. Virginia State Board of Elections*, — U. S. —, 34 U.S.L. Week 4305 [March 24, 1966]; *South Carolina v. United States*, — U. S. —, 34 U.S.L. Week 4207, 4213 [March 7, 1966]; *Carrington v. Rash*, 380 U. S. 89, 91 [1965]; *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45, 50 [1959]; *Pope v. Williams*, 193 U. S. 621, 632 [1904]; *Minor v. Happersett*, 88 U. S. [21 Wall.] 162 [1875]), examination of the validity of State voting requirements, either by the Courts or by Congress, is confined to the question of whether "state voting qualifications or procedures . . . are discriminatory on their face or in practice" (*South Carolina v. United States*, *supra* at 4213), within the meaning of either the Fifteenth Amendment (see *e.g. Guinn v. United States*, 238 U. S. 347, 366

[1915] or the Equal Protection Clause of the Fourteenth Amendment (*Harper v. Virginia State Board of Elections* *supra*; *Carrington v. Rash*, *supra*).

A.

A literacy qualification as a prerequisite for voting has long and consistently been recognized as a legitimate exercise of a State's power to establish voter qualifications. The leading case is *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45 (1959), but the power was recognized both before that case (*Guinn v. United States*, *supra* at 366) and since. *Harper v. Virginia, State Board of Elections*, *supra* at 4305; *Gray v. Sanders*, 372 U. S. 368 (1963); *Camacho v. Rogers*, 199 F. Supp. 155 (S.D.N.Y., 1961) (three-judge Court). As this Court said in upholding the English literacy requirement in *Lassiter* (360 U. S. at 51-53):

"The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin v. Harper*, 205 Ga. 779, 55 S. E. 2d 221, appeal dismissed 339 U. S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone v. Smith*, 159 Mass. 413, 414, 34 N. E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards."

A literacy qualification in this country presupposes that it is to be an English qualification. In *Camacho v. Rogers*, *supra*, where the New York English literacy provision for voting was under attack, the three-judge Court held (199 F. Supp. at 159):

"It is not unreasonable to expect a voter not only to be conversant with the issues presented for determination in choosing between candidates for election, but also to understand the language used in connection with voting. For example, there are presented in English on the ballot synopses of proposed constitutional amendments, titles of office to be filed and directives as to the use of the paper ballot or voting machine. Finally, what is more proper than that the voter be literate in the language used to conduct the business of government in his state."

Confronting the ballot in New York without a knowledge of English is virtually impossible. Indeed, the English literacy qualification was initially proposed in lieu of a shortened ballot (3 Rev. Rec. N. Y. State Const. Conv. of 1915, p. 3001). In 1964, when most of the offices to be filled were federal, the ballots for New York County bore the titles of candidates for 7 offices on 6 party tickets and synopses of 2 proposed amendments to the State Constitution and of 1 proposition. A copy of such a ballot is annexed to this brief as Appendix A. In 1965, when all of the offices to be filled were state and local, a typical ballot in New York County bore the titles of candidates for 12 offices on 9 party tickets and synopses of 9 proposed amendments to the State Constitution, of 3 propositions and of 1 question. A copy of such a ballot is annexed to the brief as Appendix B.

A person who is not English literate cannot confront such a ballot without the aid of some intermediary. Yet it is one of the basic safeguards of the democratic process that there be an independent electorate (see *Lassiter v.*

Northampton County Board of Elections, supra) and that no voter be dependent on any other person to tell him what the issues are or what the ballot says (3 Rev. Rec. *supra*, p. 3161). It cannot be denied that even if we are a culturally diverse nation and state, we have one language for official affairs. All national and state business is conducted in English. From the ballot to the income tax to the driver's license most of us meet our government only on paper and that paper is always in English.

That the English literacy requirement in New York is "designed to promote intelligent use of the ballot" (*Lassiter v. Northampton County Board of Elections, supra* at 51), and not to prevent use of the ballot by appellant or any other citizen, is clear from the New York Board of Regents literacy test. There has never been any question that the test is "fair on its face" *Harper v. Virginia State Board of Elections, supra* at 4305. See *Lassiter v. Northampton County Board of Elections, supra* at 52 n. 7; *Camacho v. Rogers, supra* at 159; 31 Notre Dame Lawyer 257-58 (1956).^{*} An example of a literacy test is annexed hereto as Appendix C. The preparation and administration of the test are the responsibility of the State Board of Regents and not of the various Boards of Election. New York Election Law, § 168 (1). The test has been described in McGOVNEY, *THE AMERICAN SUFFRAGE MEDLEY* (1949), pp. 63-64:

"The examination is based upon prose compositions of about ten lines each, prepared by the personnel of the State Department of Education, designed to be of the level of reading in the sixth grade, on topics of civics, history, geography, natural science or biography. These are uniform for any single examination throughout the State. The examination is given by school authorities and graded by school superintendents or

^{*} The fairness of the New York test has previously been acknowledged by the United States Department of Justice appearing as *amicus curiae* in *Camacho v. Rogers, supra*. See appendix to appellee's motion to dismiss or affirm in the instant case.

teachers under careful instructions from the central authority, to secure uniformity of grading as nearly as is possible. On a form handed a person taking the examination the eight to ten line composition is printed, followed by eight questions, with blanks for answers. The questions call for short answers which can easily be given by anyone able to read the composition understandably. No additional information is necessary. There is no insistence upon good English in the answers, errors of spelling and of grammar being overlooked."

The test is basically a reading test requiring only enough writing to establish comprehension of the printed material. The answers may even be copied directly from the text. Aside from the statutory requirement that a prospective voter be able to read and write, a written test insures fairness and uniformity in grading which an oral test would not. The test, like the requirement from which it derives, merely assures that the citizen of New York has the minimum English literacy necessary to enable him to deal with his government, to acquire the information necessary to a responsible citizen and to confront the ballot by himself.

Congress itself has recognized that English literacy, as opposed to literacy in any other language, bears an important relation to good citizenship. The present naturalization law provides that "no person may be naturalized as a citizen of the United States upon his own petition who cannot read, write and speak words in ordinary usage in the English language, if physically able to do so" (8 U.S.C. § 1423). This section is merely a continuation of a national policy which has been in effect since 1917 and which applies even to persons seeking to be naturalized in Puerto Rico. The present section was continued in the 1952 revision of the immigration law:

"In order that he [the alien] may intelligently use this fundamental and uniform knowledge [of our political

and social structure] and so that he may be a complete and thoroughly integrated member of our American society, the committee feels that he should have a basic knowledge of the common language of the country and be able to read, write and speak it with reasonable facility." U. S. Code Cong. & Admin. News, 82nd Cong. 2nd Sess. (1952), p. 1736.

Surely, if Congress can require English literacy as a prerequisite to citizenship, the States may require English literacy as a prerequisite to the exercise of one of the most important functions of state and national citizenship, the right to vote.

Indeed Congress has accepted the power of the state to establish an English literacy qualification for prospective voters. In passing Section 4(e) of the Voting Rights Act of 1965, the subject of the appeals in Nos. 847 and 877, Congress left intact the New York English literacy requirement for persons who cannot show six grades of education, and any suggestion that the State applies its requirement in a discriminatory manner was emphatically rejected by Senator Javits of New York, a co-sponsor of the measure. 111 Cong. Rec. 10681 (daily ed. May 20, 1965).

B.

The English literacy qualification, which is reasonable on its face, and which is applied equally and impartially to all citizens of New York, does not become unreasonable when applied to appellant. She attempts to establish that she is a member of a class which is the victim of unreasonable discrimination within the meaning of either the Fifteenth Amendment or the equal protection clause of the Fourteenth Amendment. Yet she does not claim that all persons of Puerto Rican origin are without the right to vote in New York. See New York Election Law, § 168(2). The only persons of Puerto Rican origin who may not vote are those who, like any other citizens, cannot meet the

State's voting qualifications. The mere fact that some persons who cannot meet the English literacy qualification may be of Puerto Rican origin, and this is by no means established,* constitutes no basis for claiming discrimination. *Cf. Wright v. Rockefeller*, 376 U. S. 52, 58 (1964).

Appellant attempts to establish that she is the victim of an unreasonable voting qualification by the startling proposition that "non-literacy in the English language is an inherent quality of United States citizens of Puerto Rican birth, as much as is the quality of their skin color, their culture, their 'race' or their physical characteristics" (Br. pp. 17-18). The inability to learn is not an inherent quality of any group of citizens or non-citizens. Indeed, it is frivolous to assert that no person born in Puerto Rico and educated in Spanish has been able to learn English. The experience of New York has been different. One of the reasons the State has been able to weld together its once disparate elements is the well-known fact that to a person literate in one language it is not a great burden to acquire minimal literacy in another language. As we have seen, the nature of the New York English literacy test is such that a person literate in another language should be able to pass it without difficulty after fulfilling the one year residence required of everybody in order to vote. In fact, it is in no way conceded that appellant, who has lived in New York for sixteen years and who has three children, all born in New York, could not have passed the literacy test which she refused to take. New York, more-

* The contention that a large number of citizens born in Puerto Rico are being disenfranchised by the English literacy requirement in New York, appears, from available statistics, to be unfounded. Section 4 (e) of the Voting Rights Act of 1965 was in effect in New York during the period preceding the 1965 election. Yet only 8107 persons registered to vote in New York City under the Act. *New York Times*, November 16, 1965, page 38. Of those so registering, some must have been new voters who would have been able to pass an English literacy test.

over, provides an extensive free adult education program and thus provides every citizen the means of qualifying to vote.

Appellant further insists that English literacy is not a qualification which may be exacted of her because the right to vote inheres in her by virtue of her national citizenship. This Court has held that the right to vote is not one of the privileges or immunities of citizenship. *Minor v. Happersett*, 88 U. S. [21 Wall.] 162 (1875). If the right to vote were such a privilege or immunity, then, presumably, appellant would have had the right to vote in national elections even when she resided in Puerto Rico. She had no such right. She was able to vote only in insular elections having met the voting qualifications established by the insular government. Although the right to vote in federal elections is guaranteed by the Constitution, it is an incident of state citizenship and the right to vote depends on fulfilling reasonable state voter qualifications. U. S. Const., Art. I, § 2.

C.

Conceding, apparently, that the provision of literacy for voting is a valid state qualification, appellant argues that her Spanish literacy is an alternative to English that the State is constitutionally required to accept. She thus claims a privilege accorded to no other citizen literate in a language other than English. For the reasons we have stated in part "A", *supra*, literacy in any other language is simply not the equivalent of English literacy. Appellant relies heavily on the assertion that the education and access to information of persons born in Puerto Rico and literate in Spanish make English an unreasonable voting qualification as to them. The availability of material in another language does not make the qualification of English literacy unreasonable. Moreover, Spanish speaking persons do not have great access to materials which will help them vote intelligently. According to the Record

before this Court in Nos. 847, 877, the only Spanish language media in the State are in New York City. These include three Spanish language dailies "El Diario-La Prensa" with an approximate circulation of 75,000 per day (Record in Nos. 847, 877, p. 52), "El Mundo Americano" with an approximate circulation of 10,000 per day (*id.* at 50) and "El Tiempo" which recently expanded from a weekly to a daily publication (*id.* at 50). In 1960 there were 642,622 persons of Puerto Rican birth or ancestry in New York State (United States Census, 1960; Table 6). Of these, 612,574 resided in New York City (*id.*). The record does not indicate what, if any, the circulation of Spanish language publications is outside New York City. Again, although there is one Spanish language radio station in New York City, there is no indication of access to such an outlet outside the City. The record is, moreover, devoid of any allegation that coverage extends to all candidates and issues within the State in which a Spanish-literate person would be interested and is similarly devoid of any allegation that copies of the ballot are translated into Spanish and published. Appellant's heavy reliance on the pervasiveness of radio and television in the modern world overlooks the fact that by far the greater portion of such broadcasts is in English. Appellant does not allege that she can understand oral English.

In addition, education outside the state does not give a person the requisite local experience necessary for intelligent exercise of the ballot and the fact that a citizen has voted before in another jurisdiction does not mean that the state to which he removes may not establish other reasonable qualifications, such as residence, for voting in that state. See *e.g.*, *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff'd* 380 U. S. 125 (1965). If education was not in the English language, access to local material and to current debates even on national issues is just that much more difficult.

POINT II

The history of the New York English literacy qualification, passed concurrently with programs for adult education, demonstrates that its purpose was to insure an intelligent electorate and not to discriminate against any group of citizens.

The history of the New York English literacy qualification for voting demonstrates that the State was concerned with assuring an electorate capable of intelligent exercise of its responsibilities. An English literacy qualification was proposed in New York as early as 1846. There was, however, no full debate on the question until the Constitutional Convention of 1915. At that time Mr. Charles H. Young of Westchester proposed an amendment requiring that "after January First, One Thousand, nine hundred and eighteen, no person shall become entitled to vote by attaining a majority, by naturalization or otherwise unless such person is also able, except for physical disability, to read and write English. Suitable laws shall be passed by the Legislature to enforce this provision". 3 Rev. Rec. N. Y. State Const. Conv. of 1915, p. 2999. In support of his amendment Mr. Young pointed out that 18 other States had a similar provision but that in none of those States had the effective date of the statute been postponed in order to give the people an opportunity to learn English (*id.*). Mr. Young further said:

"We should try to educate the voter. In early pioneer days a literacy test would have worked a real injury to our free and independent government when very many pioneers and immigrants of strong character and great native ability had no advantages of schooling. But this is no longer so. Educational advantages are to-day open. Everyone with a desire or knowledge and original energy and ability, anyone can secure such education as will permit him to read and write

English, and this is particularly true of those who can already read or write their own language before they land upon our shores."

. . .

"Since the Convention of 1894, the flood of immigration to this country has increased beyond the belief, and, so far as this State is concerned, adult illiteracy has grown with the increase of population. Since that time the Courts have also taken to restrict immigration with a literacy qualification. Very properly President Taft vetoed the legislation. It would be manifestly absurd to keep any man out of the United States because of his lack of knowledge of our institutions. . . ." (*Id.* at 3000-3001).

Mr. Young disagreed with shortening the ballot, a proposal which had been made on the ground that the voters had insufficient knowledge of candidates' qualifications. He said that it was better to educate the voter than to shorten the ballot: "We have wilfully opened the gate to foreign born citizens. We have welcomed them with open arms. They have been absolutely necessary to the advancement of our civilization. We have furnished them with free education, day and night, as no other country has" (*id.*). The test was urged not as a panacea, merely as an attempt to help those not yet enfranchised to exercise that franchise with intelligence (*id.* at 3002). He emphasized that "my proposition disfranchises nobody now having the right to vote. It has not attempted to do away with what exists. It is only a concern to provide for the future" (*id.* at 3003).

In the ensuing debate in the Convention, Mr. Young was joined by some whose purpose in supporting the amendment was certainly based on notions of racial superiority—notably the oft-quoted Mr. Gordon Knox Bell (*id.* at 3015-17)—although expressions of racial superiority were not confined to the Amendment's supporters (*id.* at 3043). The greater

part of the debate, however, had none of the bigoted character attributed to it by the brief *amicus curiae*. Those who supported the amendment did so because "[t]he whole fabric of our present political selection depends upon an intelligent and literate constituency" (*id.* at 3161).

In 1917 Senator Brown, Majority Leader of the State Senate, reintroduced the literacy requirement into the New York State Legislature. Once again the proposal had a deferred date so that those interested in learning English before its effective date could do so and once again it did not disenfranchise any voters who had previously acquired the right to vote. Senator Brown said that he did approve of the federal literacy test for immigrants which had recently been enacted, but he introduced his bill in the hope that "foreigners desirous of becoming citizens would study and learn the English language". *New York Times*, January 11, 1917 page 9, col. 5.

In 1919 the bill again passed the Legislature and in 1921 the proposed constitutional amendment was submitted to the People. It was carried and became part of Article II, § 1 of the New York State Constitution.*

From its inception the English literacy requirement for voting in New York has been complemented by programs for adult education. Far from seeking, in an air laden with prejudice and bigotry, forever to disenfranchise the immigrant, the same legislature which passed the English

* In the public debates preceding the 1921 election, the amendment was supported by, among others, the Citizens Union (*New York Times*, October 17, 1921, p. 27, col. 3). The Union sent to its members materials setting forth both sides of the issue. In favor of the amendment it was argued, *inter alia*, that voters would have access to ideas not otherwise available, that voting was a qualified right with reciprocal obligations and that no serious abuse in administration as a result of racial prejudice could be expected. Against the bill it was argued that it was an insufficient test of political capacity, that it could not be fairly administered and that, by excluding certain groups from voting, it would sharpen racial disagreements (*New York Times*, May 10, 1921, p. 36, col. 2).

literacy test concerned themselves with wiping out adult illiteracy. In 1917 Governor Whitman said:

"During the period 1900-1910 the percentage of child illiteracy in the state was reduced by 45% but so great was the immigration of illiterate adults during that same period that the total average percentage of illiteracy was not diminished, though in all other states except one there was a reduction in this percentage. There are at present more than 360,000 illiterates in the state over fifteen years of age. These figures indicate that if illiteracy is to be eliminated in the state, some state wide provision must be made to reach the adult immigrant through educational facilities . . . Every argument for training a child into a knowledge of the language of America and of the obligations of citizenship is equally potent for the alien who comes after the schoolage but who wishes to become a worthy American citizen." *Public Papers of Governor Charles S. Whitman* (1917). Annual Message—Adult Illiteracy, pp. 66-67.

In 1919 Governor Alfred E. Smith signed the Sage Immigrant Education Bill authorizing a \$100,000 expenditure and organizing instruction of illiterate and non-English classes and home teaching. The aim of the bill was "to obliterate adult illiteracy from the State . . . [t]here are about 600,000 persons in the State who are unable to speak English and . . . are upwards of 350,000 who are not only unable to read and write English but are unable to read or write any language." *Public Papers of Governor Alfred E. Smith* (1919) pp. 280-281. It was to be a further function of the new bill to promote the taking out of papers for citizenship, *New York Times*, May 25, 1919, Sec. II, p. 2, col. 2. In the same year, in his annual message on education, Governor Smith said:

"The industrial efficiency, the economic soundness and the civic righteousness of the state, very largely de-

pend upon our educational system. Ignorance is the greatest ally of poor citizenship. It should be our objective that no person in this State who can be under our influence should be without the ability to read and write, or without a clear conception of our American institutions and ideals." *Public Papers of Governor Alfred E. Smith* (1919) p. 32.

Another problem which beset New York at the time the literacy requirement was imposed was the increased pressure on the ballot created by women's suffrage. The Nineteenth Amendment was ratified in 1920 and had been foreseen in the Constitutional Convention 1915. 3 Rev. Rec. N. Y. State Const. Conv. (1915), p. 3005. The problem of illiteracy especially as it related to citizenship was recognized as a serious one for the state. The solutions were neither unreasonable nor burdensome. The need to learn English was one the immigrant understood and a task he embarked on joyously.*

The relationship between citizenship and literacy had its logical culmination in the placing in the hands of the Board of Regents the task of devising and administering the new requirement.

"The experiment is a novel one in its attempt definitely to connect up the school authorities with the qualifications for voting. The Americanization movement in New York State has furnished aliens the opportunity to learn English when applying for citizenship and an equal chance to comply with the state educational qualification for voting." 17 American Political Science Review 260, 263 (1923).

It is obvious from the history of the English literacy requirement that it was not aimed at disenfranchising New York's Spanish speaking population. In 1920 there were

* See Rosten, *The Education of *H*Y*M*A*N*K*A*P*L*A*N.*

only 7,719 Puerto Rican born citizens in New York of a total State population of 10,385,227 (United States Census, 1960). *Moreover, in 1920 English was the dominant language being taught in the schools of Puerto Rico after the fourth grade* (Br. *amicus curiae* of the Commonwealth of Puerto Rico in Nos. 847, 877, p. 12; *United States v. County Board of Elections*, 248 F. Supp. 319 (W.D.N.Y. 1965), *appeal dismissed* — U. S. —, 34 U.S.L. Week 3319 [March 21, 1966]).*

POINT III

The New York English literacy requirement is not rendered invalid by the fact that it becomes effective on a certain date or by the fact that certain groups of citizens may prove their literacy by means other than taking a test.

A. The New York statute does not contain a grandfather clause.

Appellant contends that the New York law is in effect a "grandfather clause" because it applies only to persons who became eligible to vote after January 1, 1922. The argument omits one crucial element, *viz.*, a grandfather. In *Guinn v. United States*, 238 U. S. 347 (1915), this Court held violative of the Fifteenth Amendment a statute providing that:

"No person shall be registered as an elector of this State or be allowed to vote in any election herein, unless he be able to read and write any section of the constitution of the State of Oklahoma; but no person who was, on January 1, 1866, or at any time prior

* In 1916, Spanish was substituted for English as the medium of instruction in Puerto Rico for grades 1-4. In 1930, it became the language of instruction in the first through eighth grades and in 1947, Spanish was established as the medium of instruction for all grades. *United States v. County Board of Elections*, *supra* at 319.

thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to read and write sections of such constitution." (*Guinn v. United States, supra* at 357.)

The statute, which took effect in 1906, chose a cutoff date forty years earlier (the date of the first Civil Rights Law) and exempted not only those entitled to vote at that time but even foreigners not resident in the United States and their lineal descendants. The only purpose and effect of the provision was to prevent Negroes from voting. By contrast, the New York law was given an effective date solely to prevent disenfranchisement of any person (see p. 22, *supra*). It applied only to those individuals who became eligible to vote after its effective date, the point of beginning and grants no rights to lineal descendants. *Sperry & Hutchinson v. Rhodes*, 220 U. S. 502, 505 (1911). While a grandfather clause operates in perpetuity to exempt an ever-growing number from a literacy test, a provision such as New York's operates solely to permit an ever-dwindling group (forty-five years have passed since the adoption of the constitutional provision for literacy) to exercise the franchise to which they were entitled when the law was changed.

The New York Law was passed at a time when the great wave of migration from Europe was over and migration from Puerto Rico had not yet begun nor was in reasonable prospect. It cannot be said, therefore, that its intent was discriminatory. Moreover, the federal law requiring literacy for naturalization similarly does not apply to persons who, on the effective date of the statute, were over forty years of age and had resided in the United States for periods totalling at least twenty years. 8 U.S.C. § 1423. *Cf. United States v. Dorto*, 5 F. 2d 596 (1st Cir. 1925) (construing the Cable Act, 42 Stat. 1021). *Amicus*

curiae concedes that a cutoff date might be acceptable were it not for the fact that the State exempted from the literacy requirement persons who become eligible to vote on or before January 1, 1922 even if they had not actually voted at that time (Br. p. 39). Reliance is placed on dictum in *Matter of Ferayorni v. Walter*, 121 Misc. 602, 202 N. Y. Supp. 91 (Sup. Ct. Queens Co. 1923). Even if that interpretation be taken as authoritative it is hardly the broad exception claimed and contributes no substance to the argument that the establishment of an effective date had a discriminatory purpose. Moreover, the invalidity of a cutoff date would have no effect on the validity of an English language requirement. *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45 (1959).

B. The provisions of the Election Law relating to groups of which appellant is not a member, do not invalidate the New York English literacy requirement.

Appellant claims that there are numerous exceptions to the English literacy qualification in New York and that these exceptions infect the entire law. Appellant has no standing to challenge the validity of such "exceptions" in and of themselves. See *South Carolina v. United States*, — U. S. —, 34 U.S.L. Week 4207, 4211 (March 7, 1966); *United States v. Raines*, 362 U. S. 17, 20-24 (1960); *N.A.A.C.P. v. Alabama*, 357 U. S. 449 (1958); *Barrows v. Jackson*, 346 U. S. 249 (1953). Again, the invalidity of any "exceptions" would have not affected the validity of the separable English literacy requirement, the only issue appellant has standing to raise.

Any "exceptions", therefore, are relevant only insofar as they may be some evidence that the literacy requirement is being applied in a manner which unreasonably discriminates against any non-expected groups. Even then the issue is not concluded. Thus, for example, if there were an exception from the literacy requirement for physically disabled persons, and if that exception were held

to have no reasonable basis, the fact that there was an unreasonable exception to the law would not conclusively establish that the requirement itself was unreasonable. In fact, to the extent that appellant may be considered a member of a group it has already been demonstrated that an English literacy requirement is reasonable as to her.

Moreover, the arguments with respect to alleged exceptions to the English literacy qualification in New York are untenable. Appellant claims that the physically disabled may vote despite illiteracy. Even if this were true, it would be a reasonable classification within the meaning of the Fourteenth Amendment. See 8 U.S.C. § 1423. Actually, however, the Legislature clearly contemplated that physically disabled persons should comply with the English literacy qualification since Election Law, § 168(1) provides that a certificate of literacy must be "to the effect that the voter to whom such certificate is issued is able to read and write English . . . *save for physical disability only, and to the extent of such physical disability which shall be stated in the certificate . . .*" (Emphasis supplied). Accordingly, the Board of Regents has adopted rules which provide:

"*Evidence of literacy:* Certificates of literacy shall be issued as follows:

- • •
- 2. To applicants who because of physical disability are unable to pass the New York State Regents literacy test but who can satisfy the examiner that they could pass the test if it were not for such disability . . ." 8 N. Y. Codes, Rules and Regulations, Chap. I § 22.3.

Appellant also states that there is an exception from the literacy qualification for honorably discharged veterans. Election Law, § 168(6) provides that proof of literacy may be established by presentation of a certificate of honorable discharge by a person who resided in New York at the time of his induction. The amendment, which was added to the Law in 1952, was opposed by the State Education Depart-

ment because it felt that an Army discharge was no assurance of literacy. N. Y. Legislative Annual (1952) p. 167. However the legislature, which is presumed to have investigated the relevant facts (*Ferguson v. Skrupa*, 372 U. S. 726 [1963]; *Two Guys v. McGinley*, 366 U. S. 582, 591 [1961]; *Carolene Products v. United States*, 323 U. S. 18 [1944]), disagreed.

In fact, English literacy is a prerequisite for induction into the Armed Forces of the United States. A potential inductee must pass certain qualifying tests. 50 App. U.S.C. § 454 (a). The written tests are administered only in English. A[rmy] R[egulations] 601-270 par. 60 (b) provides that if a non-English speaking registrant has failed the qualifying test he may be retested, but only once (AR 601-270 pars. 60[b][1], [2], 63[b]). Failure to pass the qualifying test means that "the registrant will be rejected as not qualified for military service even during war or national emergency" (AR 601-270 par. 59 [b][2]). English literacy is even required of inductees from Puerto Rico. A preliminary examination is given in English or Spanish, but if the Spanish examination is taken and passed, the registrant must take and pass an English reading test. AR 601-270 App. XX pars. 1, 3(a)(3),(4).

Appellant also attacks New York's provisions for absentee registration of inmates of veterans' hospitals and spouses, parents or children who may be with them. As to such persons, their signature on the form provided is "conclusive proof of literacy." Election Law § 155(5) (12[d]). If, for reasons of physical disability, a prospective voter is unable to sign the form, he may take the oath provided for in Election Law § 169. Election Law § 155(3). The form provided for such inmates and their relatives must contain facts from which may be determined [their] qualifications as voter[s]" (Election Law § 155[4]) and includes space for the presentation of proof of literacy. The oath to be taken by those who cannot sign is precisely the oath taken by every other disabled person. Election

Law § 169. Moreover, the legislature regards the ability to sign one's name as at least some proof of literacy. Election Law § 168(3).

Although it is clear that § 155 does not constitute an exception to the literacy requirement, if it were such an exception it would be reasonable. Military service is blind to race, creed, color or national origin. Citizens from every part of the United States serve in the armed forces and receive treatment in veterans' hospitals. It cannot seriously be contested that every effort should be made not to disenfranchise inmates of veterans' hospitals. Yet such persons present serious problems with respect to the administration of a literacy test since they cannot appear to take a test. If it is expected that the applicant will, by election time, be able to appear, he may not avail himself of the provision. Election Law § 155(4). Even without additional supporting facts, certain differentiations between veterans and civilians have long been deemed proper. See, e.g., 5 U.S.C. §§ 851 *ff.* (preferences to veterans in Government employment); 8 U.S.C. §§ 1439, 1440 (accelerated naturalization through service in the armed forces); *Hilton v. Sullivan*, 334 U. S. 323, 336-38 (1948). Any argument, then, that the New York literacy law must give way under the weight of alleged "exceptions" amounting to a denial of equal protection under the Fourteenth Amendment is entirely without substance. Even if any of the above be regarded as "exceptions" to the New York English literacy qualification for voting, they are not such exceptions as amount to a violation of the Fourteenth Amendment. As this Court has held:

"[A] State can, consistently with the Fourteenth Amendment, provide for *differences* so long as the result does not amount to a denial of due process or an 'invidious discrimination.' *Williamson v. Lee Optical Co.*, 348 U. S. 483, 489, *Griffin v. Illinois*, [351 U. S. 12] p. 18. *Absolute equality is not required*; lines can

be drawn and we often sustain them." *Douglas v. California*, 372 U. S. 353, 356-57 (1963) (emphasis supplied).

See also *Matter of Gianatasio v. Kaplan*, 142 Misc. 611 (Sup. Ct. N. Y. Co.), *aff'd* 257 N. Y. 531, *appeal dismissed* 284 U. S. 595 (1931).

None of the "exceptions" alleged establishes any invidious discrimination as to appellant. Moreover, there is no showing by appellant that any of the alleged exceptions is of any substantial numerical significance.

POINT IV

No statute or treaty of the United States voids the applicability to appellant of New York's requirement that prospective voters be able to read and write English.

Appellant maintains that certain laws and treaties of the United States with respect to Puerto Rico forbid New York to impose an English literacy requirement for voting on residents of New York born in Puerto Rico. Reliance on these statutes, particularly the Treaty of Paris of 1898 (30 Stat. 1754), and the Jones Act of 1917 (39 Stat. 951), and on the Constitution of Puerto Rico is entirely misplaced. Those laws have applicability only in Puerto Rico itself and not on the mainland. As the Court said in *Camacho v. Rogers*, 199 F. Supp. 155, 158 (S.D.N.Y. 1961):

"We think it is clear that this provision [in the Treaty of Paris] applies only to the rights of persons born in and *resident of* Puerto Rico, and that they are not given rights which they are entitled to exercise in contravention of the valid laws of a state to which they may move from Puerto Rico. They do not acquire a special status which would give them pref-

erential treatment over a resident of a sister state who moves to New York and seeks to vote from her new residence." (Emphasis supplied)

Appellant is neither a resident nor a citizen of Puerto Rico. She is a citizen of New York, the State wherein she resides. U. S. Const. Amendment XIV, § 1. Laws relating to the government of Puerto Rico attached no mantle to appellant which followed her to New York. Indeed some of the laws on which she relies, notably the United Nations Participation Act and the Constitution of Puerto Rico, became effective *after* appellant left Puerto Rico and became a citizen of New York.

Appellant cannot invoke the treaty power in support of a claim that she need not comply with the voting qualifications of her state of residence. It is the states and not Congress which set voting qualifications. In fact, no statute or treaty relied on gave appellant the right to vote in federal elections in Puerto Rico. Therefore, they could not have been intended to confer that right on her as a resident of a State. The power of Congress to establish or concur in such qualifications for residents of Puerto Rico to vote in Puerto Rico does not give any such rights to persons who leave Puerto Rico. Whether or not the power of Congress to make treaties may be somewhat broader than its legislative power (*Missouri v. Holland*, 252 U. S. 416 [1920]), it "does not extend so far as to authorize what the constitution forbids." *DeGeofroy v. Riggs*, 133 U. S. 258 (1890). The decision of Puerto Rico to educate its citizens in Spanish must have been made with the understanding that it would limit the ability of those citizens fully to participate in the life of any other part of the United States. The decision, based on justifiable internal concerns, cannot be held to invalidate pre-existing, equally justifiable internal policies of any State. What Congress cannot effect

directly, the establishment of State voter qualifications, it cannot effect indirectly, by concurring in the educational policies of Puerto Rico.

Finally, those provisions of the United Nations Charter abjuring distinctions based on "race, sex, language or religion" (Preamble, Article 55) are not self-executing (*Hitai v. Immigration and Naturalization Service*, 343 F. 2d 466 [2d Cir. 1965]); *Camacho v. Rogers*, *supra* at 158; *cf. Sei Fujii v. State*, 38 Cal. 2d 718, 242 P. 2d 617 [1952]), even assuming that a simple literacy test fairly administered and reasonably related to intelligent implementation of the democratic process is that sort of practice envisioned by the Charter.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals of the State of New York should be affirmed.

Dated: New York, New York, April 6, 1966.

Respectfully submitted,

LOUIS J. LEFKOWITZ
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State of New York
Intervenor-Appellee Pro se

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of Counsel

11

APPENDIX

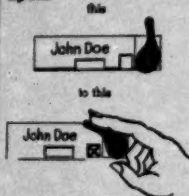
(1900-1901)

DIRECTIONS FOR VOTING ON THE VOTING MACHINE

PULL the red handle of the curtain lever (lower left side of the machine) from the left to right as far as it will go and leave it there (this will draw the curtain around you and unlock the machine for voting).



On the ballot shown at the right you will find (in column A, column B, column C, etc.) the names of the candidates. Turn down the pointer at the right of the candidate or candidates you wish to vote for until an ☒ mark appears at the right of each candidate's name for whom you intend to vote, and leave the ☒ mark showing, then:



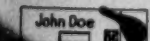
Leaving the pointer or pointers down in their voting position, pull the red handle of the curtain lever to the left as far as it will go and leave it there (this will register your vote and return the pointers to their first position after which the curtain will open).

A FEW WORDS OF EXPLANATION

No vote are registered until you pull the curtain lever to the left to open the curtain. You can therefore make as many changes in your ballot as you wish while the curtain lever is at its extreme right (curtain closed).

Each candidate's voting pointer is to the right of his name.

The machine is so arranged that you cannot turn down more than the proper number of pointers for an office. For example, if only one candidate is to be elected for any office you can turn down only one pointer for that office. If more than one candidate is to be elected to an office you can turn down only the number of pointers for the number of candidates to be elected. No vote will be registered for any candidate except that with a pointer left down over his name. Be sure to leave the pointer down over the name you wish to vote for, with the ☒ showing, then:



1	ELECTORS OF PRESIDENT AND VICE-PRESIDENT Vote once
2	UNITED STATES SENATOR Vote for one
3	
4	
5	JUSTICES OF THE SUPREME COURT 1st JUDICIAL DISTRICT Vote for five
6	
7	
8	
9	JUDGES OF THE CIVIL COURT OF THE CITY OF NEW YORK Vote for three
10	
11	REPRESENTATIVE IN CONGRESS 17th DISTRICT Vote for one
12	STATE SENATOR 20th DISTRICT Vote for one
13	MEMBER OF ASSEMBLY 8th DISTRICT Vote for one

Republican	
	A
Barry M. Goldwater William E. Miller	18 <input type="checkbox"/>
Kenneth B. Keating	24 <input type="checkbox"/>
Abraham D. Levy	34 <input type="checkbox"/>
Nicholas Tsoucalas	44 <input type="checkbox"/>
George Starke	54 <input type="checkbox"/>
Samuel M. Gold	64 <input type="checkbox"/>
Matthew M. Levy	74 <input type="checkbox"/>
Frank Gioeli	84 <input type="checkbox"/>
Harold Boer	94 <input type="checkbox"/>
Harry B. Frank	104 <input type="checkbox"/>
John V. Lindsay	114 <input type="checkbox"/>
MacNeil Mitchell	124 <input type="checkbox"/>
John M. Burns	134 <input type="checkbox"/>

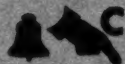
Democratic	
	B
Lyndon B. Johnson Hubert H. Humphrey	19 <input type="checkbox"/>
Robert F. Kennedy	29 <input type="checkbox"/>
Charles G. Tiernay	39 <input type="checkbox"/>
Edward R. Dudley	49 <input type="checkbox"/>
Darwin W. Telesford	59 <input type="checkbox"/>
Samuel M. Gold	69 <input type="checkbox"/>
Matthew M. Levy	79 <input type="checkbox"/>
Joseph R. Marro	89 <input type="checkbox"/>
Harold Boer	99 <input type="checkbox"/>
Harry B. Frank	109 <input type="checkbox"/>
Eleanor Clark French	119 <input type="checkbox"/>
Frederic S. Berman	129 <input type="checkbox"/>
Bruno Cappellini	139 <input type="checkbox"/>

Liberal	
	C
Lyndon B. Johnson Hubert H. Humphrey	16 <input type="checkbox"/>
Robert F. Kennedy	26 <input type="checkbox"/>
Max Bloom	36 <input type="checkbox"/>
Edward R. Dudley	46 <input type="checkbox"/>
George Starke	56 <input type="checkbox"/>
Samuel M. Gold	66 <input type="checkbox"/>
Matthew M. Levy	76 <input type="checkbox"/>
Joseph R. Marro	86 <input type="checkbox"/>
Harold Boer	96 <input type="checkbox"/>
Harry B. Frank	106 <input type="checkbox"/>
Eleanor Clark French	116 <input type="checkbox"/>
Frederic S. Berman	126 <input type="checkbox"/>
Bruno Cappellini	136 <input type="checkbox"/>

Conservative	
	D
Henry Paulucci	28 <input type="checkbox"/>
Kenneth J. Mullane	38 <input type="checkbox"/>
Constantine G. Connors	48 <input type="checkbox"/>
James S. Phair	58 <input type="checkbox"/>
John O. Keenan	68 <input type="checkbox"/>
Bella V. Dodd	78 <input type="checkbox"/>
Kieran O'Doherty	118 <input type="checkbox"/>
Henry S. Middendorf, Sr.	138 <input type="checkbox"/>

Socialist Labor	
	E
Eric H. Hennings A. Blum	10 <input type="checkbox"/>
John Emory	10 <input type="checkbox"/>

Liberal



Endorsed Name for
Lyndon B. Johnson
Hubert H. Humphrey
10 ☐

Robert F. Kennedy
20 ☐

Max Bloom
30 ☐

Edward R. Dudley
40 ☐

George Starke
50 ☐

Samuel M. Gold
60 ☐

Matthew M. Levy
70 ☐

Joseph R. Marro
80 ☐

Harold Boer
90 ☐

Harry B. Frank
100 ☐

James Clark French
110 ☐

Frederic S. Berman
120 ☐

Bruno Cappellini
130 ☐

Conservative



Henry Poolucci
20 ☐

Kenneth J. Mullane
30 ☐

Condemino G. Connors
40 ☐

James S. Phair
50 ☐

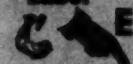
John G. Keenan
60 ☐

Bella V. Dodd
70 ☐

Kieran O'Doherty
110 ☐

Henry S. Middendorf, Sr.
130 ☐

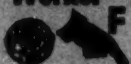
Socialist Labor



Endorsed Name for
Eric Hoon
Henning A. Mosen
10 ☐

John Emanuel
20 ☐

Socialist Worker



Endorsed Name for
Clifton Dabney
Edward Shaw
10 ☐

Richard Garret
20 ☐

AMENDMENTS

AMENDMENT NUMBER ONE

1 Shall the proposed amendments to sections one, two, four, six and ten of article eighteen of the constitution, in relation to the power of the legislature in aid of housing, school physical programs, and rehabilitation and improvement of abandoned buildings, and in relation to the contracting of municipal subscriptions for land programs, be approved?

AMENDMENT NUMBER TWO

2 Shall the proposed amendments to section seven of article one, to sections six, seventeen and nineteen of article three, and to section six of article five of the constitution, repealing obsolete or unnecessary provisions relating to the establishment of corporations when private property is taken for public use, salaries of members of the legislature, street railways, claims against the state, and appointment and promotion of veterans in the civil service prior to January 1, 1901, be approved?

PROPOSITION

PROPOSITION NUMBER ONE

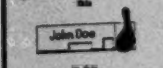
1 Shall sections two through ten of chapter 373 of the laws of nineteen hundred thirty-four, providing for an increase of seven and one-half million dollars in the maximum aggregate amount of state periodic subsidies for the payment of which in any one year contracts may be outstanding pursuant to the Public Housing Law and authorizing the creation of additional state debt and the sale of state bonds in the aggregate amount of one hundred sixty-five million dollars for clean drainage and low cost housing purposes under and pursuant to article eighteen of the constitution, be approved?

INSTRUCTIONS FOR VOTING ON THE VOTING MACHINE

Put the end handle of the machine lower down last side of the machine into the left to right on far as it will go and leave it there (this will close the machine around you and prevent the machine for voting).



On the ballot shown at the right you will find the columns A, column B, column C, etc. (the names of the candidates). You draw the pointer at the right of the candidate or candidates you wish to vote for until an X mark appears at the right of each candidate's name for whom you intend to vote, and leave the X mark showing.

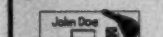


Leaving the pointer as pointed down in their voting position, pull the end handle of the machine lower to the left as far as it will go and leave it there (this will register your vote and return the pointer to their first position, after which the curtain will open).

A FEW WORDS OF EXPLANATION
The votes are registered until you pull the curtain lower to the left to open the machine. You can therefore make as many changes in your ballot as you wish while the curtain lower is at the extreme right position closed.








Each candidate's voting position is to the right of his name.

The machine is so arranged that you cannot vote down more than the proper number of positions for an office. For example, if only one candidate is to be elected for any office you can vote down only one position for that office. If more than one candidate is to be elected to an office you can vote down only the number of positions for the number of candidates to be elected. No vote will be registered for any candidate except that with a pointer left down over his name. So be sure to leave the pointer down over the name you wish to vote for, with the X showing then.



There is no danger of anyone knowing how you vote, as the movement of the curtain lower to the left returns the voter pointer up to its normal position before the curtain begins to open.

—

								
1	ASSOCIATE JUDGE OF THE COURT OF APPEALS Vote for one	Kenneth B. Keating 1A <input type="checkbox"/>	Owen McGivern 1B <input checked="" type="checkbox"/>	Owen McGivern 1C <input type="checkbox"/>	Henry S. Middlebrook, Jr. 1D <input type="checkbox"/>			
2	MAYOR Vote for one	John V. Lindsay 2A <input type="checkbox"/>	Abraham D. Beame 2B <input checked="" type="checkbox"/>	John V. Lindsay 2C <input type="checkbox"/>	William F. Buckley, Jr. 2D <input type="checkbox"/>	John V. Lindsay 2E <input type="checkbox"/>	Abraham D. Beame 2F <input type="checkbox"/>	
3								
4								
5	COMPTROLLER Vote for one	Milton Mallon 5A <input type="checkbox"/>	Mario A. Procaccino 5B <input checked="" type="checkbox"/>	Milton Mallon 5C <input type="checkbox"/>	Hugh A. Morley 5D <input type="checkbox"/>	Milton Mallon 5E <input type="checkbox"/>	Mario A. Procaccino 5F <input type="checkbox"/>	
6								
7								
8	PRESIDENT OF THE COUNCIL Vote for one	Timothy W. Costello 8A <input type="checkbox"/>	Frank D. O'Connor 8B <input checked="" type="checkbox"/>	Timothy W. Costello 8C <input type="checkbox"/>	Rosemary G. McFall 8D <input type="checkbox"/>	Timothy W. Costello 8E <input type="checkbox"/>	Frank D. O'Connor 8F <input type="checkbox"/>	
9								
10								
11	BOROUGH PRESIDENT Vote for one	Constance B. Motley 11A <input type="checkbox"/>	Constance B. Motley 11B <input checked="" type="checkbox"/>	Constance B. Motley 11C <input type="checkbox"/>	Kenneth J. McIlwain 11D <input type="checkbox"/>			
12		Gustavo G. Rosenberg 12A <input type="checkbox"/>	Harry B. Frank 12B <input checked="" type="checkbox"/>	Gustavo G. Rosenberg 12C <input type="checkbox"/>	Robert F. Mahoney 12D <input type="checkbox"/>			
13	JUSTICES OF THE SUPREME COURT 1st JUDICIAL DISTRICT Vote for three	Charles D. Breitler 13A <input type="checkbox"/>	Charles D. Breitler 13B <input checked="" type="checkbox"/>	Charles D. Breitler 13C <input type="checkbox"/>	James A. Higgins 13D <input type="checkbox"/>			
14		Irving H. Seppel 14A <input type="checkbox"/>	Irving H. Seppel 14B <input checked="" type="checkbox"/>	Irving H. Seppel 14C <input type="checkbox"/>	Salvo V. Dadi 14D <input type="checkbox"/>			
15	DISTRICT ATTORNEY Vote for one	Frank S. Hogan 15A <input type="checkbox"/>	Frank S. Hogan 15B <input checked="" type="checkbox"/>	Frank S. Hogan 15C <input type="checkbox"/>	Frank S. Hogan 15D <input type="checkbox"/>			
16	COUNCILMAN AT LARGE Vote for one	Leaher Brown 16A <input type="checkbox"/>	Carlos M. Rice 16B <input checked="" type="checkbox"/>	Henry J. Stern 16C <input type="checkbox"/>	Frank J. Hesse 16D <input type="checkbox"/>			
17	JUDGE OF THE CIVIL COURT OF THE CITY OF NEW YORK Vote for one	William Suglia 17A <input type="checkbox"/>	Arnold L. Fain 17B <input checked="" type="checkbox"/>	Arnold L. Fain 17C <input type="checkbox"/>	Dorothy Franklin 17D <input type="checkbox"/>			
18								
19	COUNCILMAN 6th DISTRICT Vote for one		Robert A. Low 19B <input checked="" type="checkbox"/>	Robert A. Low 19C <input type="checkbox"/>	Carl Phares 19D <input type="checkbox"/>			
20	STATE SENATOR 36th DISTRICT Vote for one	Solomon B. Polakoff 20A <input type="checkbox"/>	Jerome L. Wilton 20B <input checked="" type="checkbox"/>	Jerome L. Wilton 20C <input type="checkbox"/>	Andrew J. McCauley 20D <input type="checkbox"/>			
21	MEMBER OF ASSEMBLY 72nd DISTRICT Vote for one	S. William Green 21A <input type="checkbox"/>	Mary Yandover 21B <input checked="" type="checkbox"/>	Lewis Kruger 21C <input type="checkbox"/>	John R. Carroll 21D <input type="checkbox"/>			

Appendix C.

1943—Test 1

NEW YORK STATE REGENTS LITERACY TEST
(To be filled in by the candidate in ink)

Write your name here
First name Middle initial Last name

Write your address here

Write the date here
Month Day Year

Read this and then write the answers to the questions
Read it as many times as you need to

The legislative branch of the National Government is called the Congress of the United States. Congress makes the laws of the Nation. Congress is composed of two houses. The upper house is called the Senate and its members are called Senators. There are 96 Senators in the upper house, two from each State. Each United States Senator is elected for a term of six years. The lower house of Congress is known as the House of Representatives. The number of Representatives from each state is determined by the population of that state. At present there are 435 members of the House of Representatives. Each Representative is elected for a term of two years. Congress meets in the Capitol at Washington.

Appendix C

The answers to the following questions are to be
taken from the above paragraph

- 1 How many houses are there in Congress?
- 2 What does Congress do?
- 3 What is the lower house of Congress called?
- 4 How many members are there in the lower house?
- 5 How long is the term of office of a United States Senator?
- 6 How many Senators are there from each state?
- 7 For how long a period are members of the House of Representatives elected?
- 8 In what city does Congress meet?

Appendix B

2. The second

The second is the following: The first is the

1. The first is the following: The first is the
2. The second is the following: The second is the
3. The third is the following: The third is the
4. The fourth is the following: The fourth is the
5. The fifth is the following: The fifth is the
6. The sixth is the following: The sixth is the
7. The seventh is the following: The seventh is the
8. The eighth is the following: The eighth is the
9. The ninth is the following: The ninth is the
10. The tenth is the following: The tenth is the
11. The eleventh is the following: The eleventh is the
12. The twelfth is the following: The twelfth is the
13. The thirteenth is the following: The thirteenth is the
14. The fourteenth is the following: The fourteenth is the
15. The fifteenth is the following: The fifteenth is the
16. The sixteenth is the following: The sixteenth is the
17. The seventeenth is the following: The seventeenth is the
18. The eighteenth is the following: The eighteenth is the
19. The nineteenth is the following: The nineteenth is the
20. The twentieth is the following: The twentieth is the
21. The twenty-first is the following: The twenty-first is the
22. The twenty-second is the following: The twenty-second is the
23. The twenty-third is the following: The twenty-third is the
24. The twenty-fourth is the following: The twenty-fourth is the
25. The twenty-fifth is the following: The twenty-fifth is the
26. The twenty-sixth is the following: The twenty-sixth is the
27. The twenty-seventh is the following: The twenty-seventh is the
28. The twenty-eighth is the following: The twenty-eighth is the
29. The twenty-ninth is the following: The twenty-ninth is the
30. The thirtieth is the following: The thirtieth is the
31. The thirty-first is the following: The thirty-first is the
32. The thirty-second is the following: The thirty-second is the
33. The thirty-third is the following: The thirty-third is the
34. The thirty-fourth is the following: The thirty-fourth is the
35. The thirty-fifth is the following: The thirty-fifth is the
36. The thirty-sixth is the following: The thirty-sixth is the
37. The thirty-seventh is the following: The thirty-seventh is the
38. The thirty-eighth is the following: The thirty-eighth is the
39. The thirty-ninth is the following: The thirty-ninth is the
40. The fortieth is the following: The fortieth is the
41. The forty-first is the following: The forty-first is the
42. The forty-second is the following: The forty-second is the
43. The forty-third is the following: The forty-third is the
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IN THE

JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

—against—

JAMES M. POWER, THOMAS MALLER, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York,

Appellees,

—and—

LOUIS J. LEFKOWITZ, as Attorney General,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

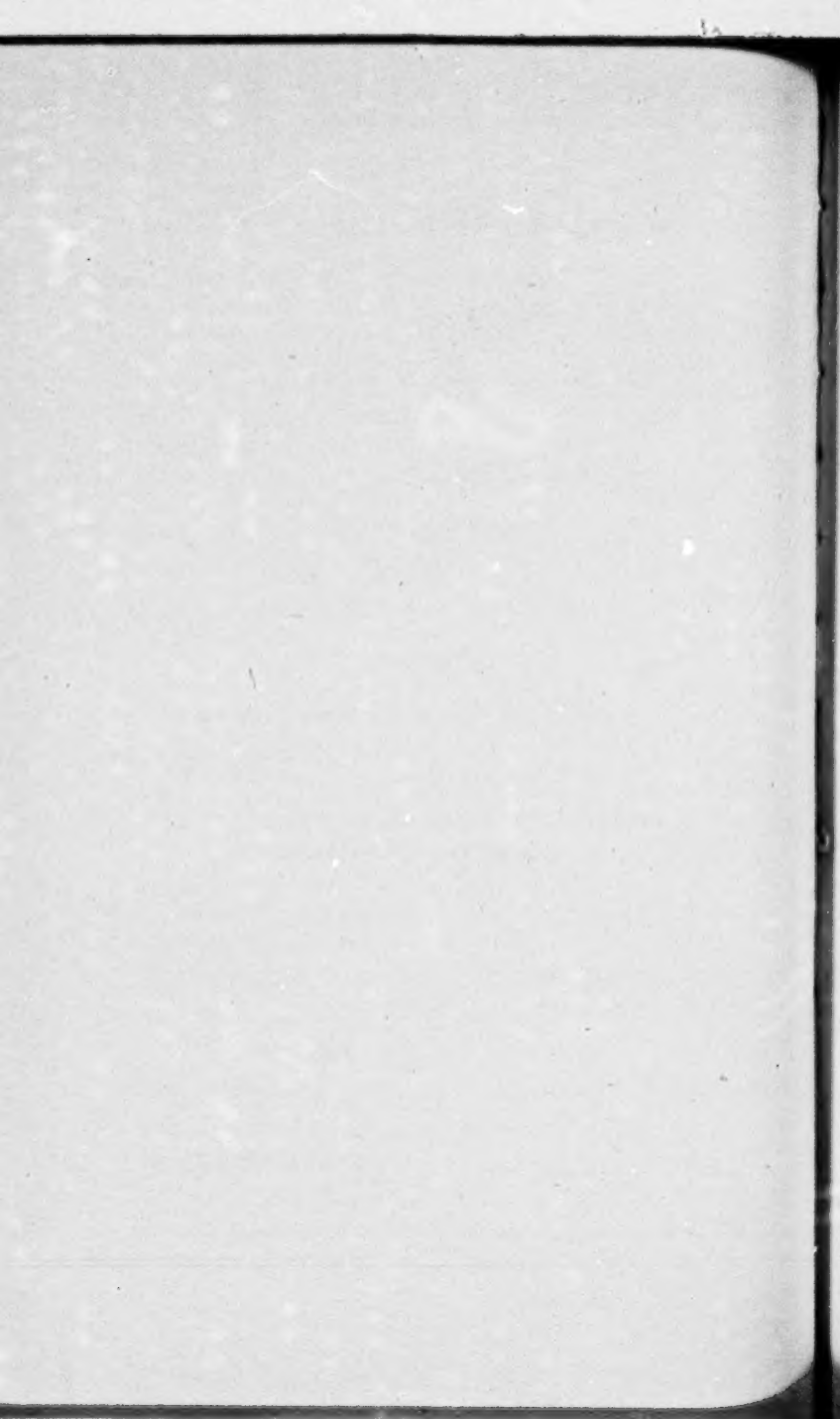
**MOTION FOR LEAVE TO FILE BRIEF *AMICUS*
CURIAE ON BEHALF OF NATHAN STRAUS,
IN SUPPORT OF APPELLANT, AND
BRIEF OF *AMICUS CURIAE***

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

—against—

JAMES M. POWER, THOMAS MALLER, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York,

Appellees,

—and—

LOUIS J. LEFKOWITZ, as Attorney General,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

May It Please the Court:

The undersigned, as counsel for Nathan Straus, respectfully moves this Honorable Court, for leave to file the accompanying brief, *amicus curiae*, in support of the appellant herein.

Counsel for appellant has consented to the filing of this brief. We have been unable to ascertain whether counsel for appellees or for the intervenor-appellee will so consent.

The following special reasons are set forth in support of this motion:

1. The movant is a candidate for the Democratic nomination for the House of Representatives in the 22nd Congressional District of the State of New York, which is located in the southeast portion of the County and Borough of the Bronx in the City of New York. It is believed that more than thirty per cent of the eligible voters in both the Democratic Primary, to be held at the end of June of 1966, and in the Congressional election, which will be held in November of 1966, are American-born citizens of Puerto Rican birth. Many of such persons are literate in their native Spanish, but are not literate in English.

As such candidate, the movant has a direct interest in the constitutionality of Article 2, Section 1, of the New York State Constitution and of Sections 150, 168, and 201 of the Election Law of the State of New York, since these provisions prevent native-born citizens of the United States, who are literate in Spanish but not in English, from voting for the movant as a candidate for the Congress of the United States.

2. The able brief submitted on behalf of appellant fails to set forth a number of arguments, which it is respectfully submitted demonstrate that the aforesaid provisions of the New York State Constitution and of the Election Law of the State of New York infringe appellant's rights under the Constitution of the United States. These additional reasons are set forth in the brief submitted herewith.

3. Thus, appellant fails to contend that the above cited provisions of the Constitution and the Election Law of New York have been rendered unenforcible by the enactment of Section 4(e) of the Voting Rights Act of August

6, 1965, 79 Stat. 437, 439, insofar as said Federal statute prohibits the States from denying the right to vote to citizens educated in Puerto Rico who are literate in Spanish, because of their inability to read and write English. This conclusion, it is respectfully submitted, is dictated by the Supremacy Clause of the United States Constitution, Article VI, Section II. [Indeed, appellant contends (and movant respectfully submits erroneously) that the Voting Rights Act of August 6, 1965 is not, by itself, determinative of the issue presented in this case (pg. 26 of appellant's principal brief).]

4. Appellant further fails to contend that, insofar as Congressional elections are concerned, Section 4(e) of the Voting Rights Act of 1965 is a valid exercise of power conferred upon Congress by Sections II and V of Article I and by the Seventeenth Amendment to the United States Constitution, which render the English literacy provisions of the New York State Constitution and Election Law unenforceable.

It is therefore respectfully requested that the motion for leave to file this brief *amicus curiae* be granted.

Dated: New York, N. Y., April 7, 1966.

ASHER LANS

*Attorney for Nathan Straus, Movant
Amicus Curiae*

IN THE
Supreme Court of the United States
OCTOBER TERM, 1965
No. 673

MARTHA CARDONA,

Appellant,

—against—

JAMES M. POWER, THOMAS MALLER, MAURICE J. O'ROURKE
and JOHN R. CREWS, Members of and constituting the
Board of Elections of the City of New York,

Appellees,

—and—

LOUIS J. LEFKOWITZ, as Attorney General,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

**BRIEF OF NATHAN STRAUS, IN SUPPORT
OF APPELLANT**

Preliminary Statement

Appellant is a native-born citizen of Puerto Rico, at her birth and now a part of the United States, whose common language is Spanish. She was educated in, and is literate, only in Spanish. The New York City Board of Elections has rejected appellant's demand that she be enrolled as

a voter, solely because of the provisions of Article II, Sec. 1 of the New York Constitution (and the provisions of Sections 150, 168 and 201 of the Election Law, which purportedly carry out the cited provision of the Constitution) which provide, among other things, that no person shall be eligible to vote unless able "to write and read English."

It is contended that the above cited provisions of the Constitution and Election Law of the State of New York deprive appellant of rights guaranteed to her under the Fourteenth Amendment to the United States Constitution.

Section 4(e) of the Voting Rights Act of 1965 prohibits the States from conditioning the balloting rights of persons educated in American-flag schools, in which the predominant classroom language was other than English, upon literacy in English. It is contended that this Statute is a constitutional exercise of Congressional power under the Fourteenth Amendment and, in the case of Congressional elections, under Sections II(1) and V(1) of Article I and the Seventeenth Amendment, which, under the Supremacy Clause of Article VI negates the contrary provisions of the New York State Constitution and laws.

ARGUMENT

POINT I

The literacy in English provisions of the New York State Constitution and Election Law violate the Fourteenth Amendment to the United States Constitution and have been rendered unenforceable, under the "Supremacy Clause", by the enactment of Section 4(c) of the Voting Rights Act of August 6, 1965.

Article 2, Section 1 of the New York State Constitution and Sections 150, 168 and 201 of the New York State Election Law (quoted in the Appendix to Appellant's Brief) contain the general requirement that a citizen be literate in English, in order to qualify as a voter in the State of New York.

The keystone of the present appellant's position, and of the dissenting opinion by three judges of the New York Court of Appeals, is that the denial of voting rights, under the above listed provisions of the New York State Constitution and Election Law, to a native-born American citizen, who is literate in Spanish, but not in English, is unconstitutionally discriminatory. Puerto Rican born United States citizens have been held by this court to be entitled to "exact equality with citizens from the American homeland", *Balzac v. Commonwealth of Puerto Rico*, 258 U. S. 298, 311 (1921). Accordingly, the application of the New York Constitution and Law to deny voting rights to Puerto Rican born citizens who are fully literate, but only in Spanish, excludes those citizens from the suffrage, in derogation of "the equal protection of the laws" which they are guaranteed by the Fourteenth Amendment to the United States Constitution.

The present movant agrees with appellant's contention that the Fourteenth Amendment, of and by itself, renders illegal the New York State voting qualification rules, as applied to citizens who, though literate in their native language, cannot read and write English.

It seems to us, however, the clearest reason why the above cited provisions of the New York State Constitution and Election Law may not be enforced is their flat inconsistency with Section 4(e) of the Voting Rights Act of August 6, 1965, P. L. 89-110, 79 Stat. 437, 439, which reads, in part, as follows:

"(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English Language."

Absent contrary and constitutional Federal legislation, the several States may, of course, condition the right to vote upon reasonable literacy requirements, if such tests are not designed or utilized so as to discriminate against a class. *Lassiter v. Northampton Education Board*, 360 U. S. 45. However, recent decisions of this court make it clear that the States are prohibited from drawing lines of eligibility for the franchise "which are inconsistent with the Equal Protection clause of the Fourteenth Amendment". *Harper et al. v. Virginia State Board of Elections et al.* — U. S. — (decided March 24, 1966.) See also *Louisiana v. U. S.*, 380 U. S. 145; *Carrington v. Rash*, 380 U. S. 89; *Gray v. Sanders*, 372 U. S. 368, 380.

Almost a century ago, this Court in *Yick Wo v. Hopkins*, 118 U. S. 356, 370, described "the political franchise of voting" as a "fundamental political right, because preservative of all rights." Accordingly, and in the absence of congressional action, legislation or action by the States in an alleged infringement of the right of citizens to vote has always been subject to meticulous judicial scrutiny. *Reynolds v. Sims*, 377 U. S. 533, 561-2.

The Federal and State governments have concurrent jurisdiction to control exercise of the suffrage in the several States, subject to the first Section of the XIVth Amendment and, in the case of congressional elections, to Article I, Sections II and V, and to the XVIIth Amendment. It is elementary, however, that legislation properly adopted by Congress fixing or prohibiting state imposition of restrictions on eligibility to vote binds "the judges in every State . . . anything in the Constitution or laws of any State to the contrary notwithstanding." U. S. Cons., Art. VI, Sec. II.

This Court has repeatedly held that the plain meaning of the Supremacy Clause is that conflicting State law and policy must yield to contrary Federal statute and policy, in any area of concurrent jurisdiction. See *Sola Electric Co. v. Jefferson Electric Co.*, 317 U. S. 173, 176; *Francis v. Southern Pacific Co.*, 333 U. S. 445; *Testa v. Katt*, 330 U. S. 386, 391; *Hill v. Fla.*, 325 U. S. 538.

These principles have expressly been applied to State control of suffrage. As this court recently stated, the states may not create standards for exercise of the right to vote which "contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed." *Lassiter v. Northampton Education Board*, *supra*, at page 51.

The Fifth Section of the Fourteenth Amendment gives Congress the affirmative "power to enforce, by appropriate legislation the provisions of" the Amendment. In a decision speaking of the substantially similar enforcement sections of the XIIIth, XIVth and XVth Amendments and given particular authority because rendered shortly after their enactment, this Court stated:

"All of the amendments derive much of their force from [the enforcement sections]. It is not said the *judicial power* of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. . . . It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation." *Ex parte Virginia*, 100 U. S. 337, at 345-6.

This court has consistently recognized that the "guidance of Congress" was a key factor in determining the application of the "due process," "equal protection" and "privileges or immunities" clauses of the Fourteenth Amendment. *Fay v. New York*, 332 U. S. 261 at 283-4. See also *Alabama v. U. S.*, 373 U. S. 545; *Strauder v. West Virginia*, 100 U. S. 303; *Ex parte Virginia*, *supra*.

We respectfully submit that under the Fifth Section of the Fourteenth Amendment Congress has the power to prevent the states from depriving literate citizens of the United States, educated in Spanish in Puerto Rico, from being deprived of the right to vote, merely because they are unable to read and write in English. The provisions of Section 4(e) of the Voting Rights Act of August 6, 1965 which stripped the states of such power, is an appropriate Congressional implementation of this court's holding that Puerto Rican-born United States citizens are entitled to "exact equality with citizens from the American homeland", *Balzac v. Commonwealth of Puerto Rico*, *supra*.

POINT II

As applied to Congressional elections, including nominating primaries, the literacy in English provisions of the New York State Constitution and Election Law also violate Article I, Sections II and V, and the XVIIth Amendment to the United States Constitution.

The general provisions of Article 2, Section 1 of the New York State Constitution and of Sections 150, 168 and 201 of the New York State Election Law that a citizen must be literate in English, in order to qualify as a voter, are applied by appellees, the New York City Board of Elections, in the election of members of the United States House of Representatives and Senate, to represent New York. They are also applied in the primaries which designate the candidates of the various parties for such congressional office.

This result stems from a literal reading of the identical language of Article I, Section II, and of Section I of the XVIIth Amendment which provide that, in the respective election of Senators and Representatives: "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

For the reasons set forth in Point I of this brief and in the Appellant's brief, it is respectfully contended that the literacy in English provisions of New York law are unconstitutional, in any event, and have been rendered nugatory by the contrary mandate contained in Section 4(e) of the Voting Rights Act of August 6, 1965. However, if this court should invalidate Section 4(e), as applied to State and local balloting, it seems clear that the literacy

in English provisions cannot be applied to Congressional elections and nominating primaries.

Nothing in the United States Constitution guarantees or creates the right to vote in State or local elections or even in a Presidential election. In these areas the Constitution merely prohibits restrictions on the suffrage, "on account of race, color or previous condition of servitude," "on account of sex", and such other limitations as deprive citizens of "the equal protection of the laws." (XVth, XIXth and XIVth Amendments.)

However, the right to vote for Representatives and Senators comes "not from the States, but from the Constitution, and so is a 'privilege and immunity' of national citizenship, about the exercise of which Congress may throw the protection of its legislation and which, under Section I of the Fourteenth Amendment, no State may 'abridge.'"¹ See *Ex parte Yarbrough*, 110 U. S. 651; *United States v. Saylor*, 322 U. S. 385; *Wiley v. Sinkler*, 179 U. S. 62.

Similarly the right to vote in a primary election for the nomination of Congressional candidates is established and guaranteed by the Constitution of the United States. *U. S. v. Classic*, 313 U. S. 299; *Smith v. Allwright*, 321 U. S. 649.

Under Article I, Section V of the Constitution, "Each House shall be the judge of the election . . . of its own members . . .". The power conferred by this sentence has been broadly construed, since the founding of this Republic, so as, among other things, to be virtually immune from judicial review. *Barry v. United States*, 279 U. S. 597; *Keogh v. Horner*, 8 F. Supp. 933 (D. C. Ill.); *Daniel*

¹ Corwin, *The Constitution and What It Means Today* (1963 Ed.), p. 6.

son v. Fitzsimmons, 44 N. W. 2d 484, 232 Minn. 149. As a coordinate branch of the Federal government, given equal responsibility with the courts under Section V of the XIVth Amendment, for ensuring "equal protection of the laws" to all citizens, Congress, at the very least, has the power to prohibit the creation of State restrictions upon voting for members of the House and Senate. Cf. *Ex parte Virginia*, *supra*; *Shub v. Simpson*, 76 A. 2d 332, 196 Md. 177.

By Article 4(e) of the 1965 Voting Rights Act, Congress has declared that no person who has been educated in an American school in which the predominant language is other than English, shall be disqualified from voting by an English literacy test. This Congressional determination is a reasonable exercise of the powers conferred by the Constitution, read as a whole, upon the legislative branch of the Federal Government, contravenes the contrary provisions of the New York Constitution or law and is not subject to judicial review. Cf. *Luther v. Borden*, 7 How. (U. S.) 1; *Coleman v. Miller*, 307 U. S. 433; *Legal Tender Cases*, 12 Wall. (U. S.) 457.

POINT III

Section 4(e) of the Voting Rights Act of 1965 is a valid implementation of international agreements made by the United States, which under the Supremacy Clause invalidates any contrary provisions of the New York State Constitution or laws.

In 1945, with the concurrence of the Senate, President Truman ratified the Charter of the United Nations, as a Treaty. Article 55 of the Charter (59 Stat. 1045-6) provides in part that the subscribing nations "shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". [Emphasis supplied.] Article 56 of the Charter (*id.*, at 1046), binds the signatory nations to take action "in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

In order to secure exemption from United Nations control over Puerto Rico as "colonial territory" of the United States, pursuant to Article 73(e) of the United Nations Charter, President Eisenhower assured the General Assembly that, among other things: "The People of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage". (*U. S. Participation in the United Nations*, Report by the President to the Congress for the year 1953, pp. 181 *et seq.*; 28 Dept. State Bulletin 587.)

As a Treaty made under the authority of the United States, the United Nations Charter is, pursuant to Article VI, Section II, "the supreme law of the land" and negates "anything in the Constitution or laws of any State to the contrary notwithstanding". *Bacardi Corporation of*

America v. Domenech, 311 U. S. 150; *Ware v. Hylton*, 3 Dall. (U. S.) 171; *Santovincenzo v. Egan*, 284 U. S. 30.

As an Executive Agreement, the commitment made to the United Nations by the President in 1953, with respect to the voting rights of Puerto Ricans, is an international compact, which, like a treaty, is the supreme law of the land, under Article VI, Section II of the U. S. Constitution. *United States v. Pink*, 315 U. S. 203; *United States v. Belmont*, 301 U. S. 324.¹

The provisions of Section 4(e) of the Voting Rights Act of 1965 are an appropriate method, by which Congress implemented this government's prior international commitment to the effect that English, as a dominant language, would not be impressed upon citizens, born or educated in Puerto Rico, as a condition to their exercise of the suffrage. Such law was "necessary and proper," in the conclusive judgment of Congress, to carry out the obligations assumed by the United States pursuant to the United Nations Charter. For this reason alone, the literacy in English provisions of the New York State Constitution and Election Law are unenforceable. *Missouri v. Holland*, 252 U. S. 416; *United States v. Fox*, 94 U. S. 315; *Todok v. Union State Bank of Harvard*, 281 U. S. 449.

¹ See also McDougal & Lans, "Treaties and Congressional-Executive or Presidential Agreements" (1945), 54 *Yale L.J.* 181, 308, 314-6.

CONCLUSION

WHEREFORE, for the reasons set forth in appellant's brief and this brief, the order appealed from should be reversed, and appellees, New York City Board of Elections, directed to enroll appellant as a duly qualified voter.

Respectfully submitted,

ASHER LANS

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STEPHEN J. FEINBERG

RICHARD KING

Of Counsel

April 7, 1966





SUPREME COURT OF THE UNITED STATES

No. 673.—OCTOBER TERM, 1965.

Martha Cardona, Appellant, } On Appeal From the
v. } Court of Appeals of the
James M. Power et al. } State of New York.

[June 13, 1966.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case was argued with *Katzenbach v. Morgan*, ante, p. —, also decided today. We there sustained the constitutionality of § 4 (e) of the Voting Rights Act of 1965, and held that, by force of the Supremacy Clause and as provided in § 4 (e), the State of New York's English literacy requirement cannot be enforced against persons who had successfully completed a sixth grade education in a public school in, or a private school accredited by the Commonwealth of Puerto Rico in which the language of instruction was other than English. In this case, which was adjudicated by the New York courts before the enactment of § 4 (e), appellant unsuccessfully sought a judicial determination that the New York English literacy requirement, as applied to deny her the right to vote in all elections, violated the Federal Constitution.

Appellant was born and educated in the Commonwealth of Puerto Rico and has lived in New York City since about 1948. On July 23, 1963, she attempted to register to vote, presenting evidence of United States citizenship, her age and residence; and she represented that although she was able to read and write Spanish, she could not satisfy New York's English literacy requirement. The New York City Board of Elections refused to register her as a voter solely on the ground that she

was not literate in English. Appellant then brought this proceeding in state court against the Board of Elections and its members. She alleged that the New York English literacy requirement as applied was invalid under the Federal Constitution and sought an order directing the Board to register her as a duly qualified voter, or, in the alternative, directing the Board to administer a literacy test in the Spanish language, and if she passed the test, to register her as a duly qualified voter. The trial court denied the relief prayed for and the New York Court of Appeals, three judges dissenting, affirmed. 16 N. Y. 2d 639, 209 N. E. 2d 119, remittitur amended, 16 N. Y. 2d 708, 827, 209 N. E. 2d 556, 210 N. E. 2d 458. We noted probable jurisdiction. 328 U. S. 1008.

Although appellant's complaint alleges that she attended a school in Puerto Rico, it is not alleged therein nor have we been clearly informed in any other way whether, as required by § 4 (e), she successfully completed the sixth grade of a public school in, or a private school accredited by the Commonwealth.* If she had completed the sixth grade in such a school, her failure to satisfy the New York English literacy requirement would no longer be a bar to her registration in light of our decision today in *Katzenbach v. Morgan*. This case might therefore be moot; appellant would not need any relief if § 4 (e) in terms accomplished the result she sought. Cf., e. g., *Dinsmore v. Southern Express Co.*, 183 U. S. 115, 119-120. Moreover, even if appellant were not specifically covered by § 4 (e), the New York courts should in the first instance determine whether, in light of this fed-

*Presumably the predominant classroom language of the school she attended was other than English, and thus that element of § 4 (e) is satisfied. If the predominant classroom language had been English, and if she had successfully completed the sixth grade, then she would be entitled to vote under § 168 of the New York Election Law. See n. 2, in *Katzenbach v. Morgan*, ante.

eral enactment, those applications of the New York English literacy requirement not in terms prohibited by § 4 (e) have continuing validity. We therefore vacate the judgment, without costs to either party in this Court, and remand the cause to the Court of Appeals of New York for such further proceedings as it may deem appropriate.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 673.—OCTOBER TERM, 1965.

Martha Cardona, Appellant,	On Appeal From the	
v.		Court of Appeals of the
James M. Power et al.		State of New York.

[June 13, 1966.]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE FORTAS concurs, dissenting.

Appellant is an American of Spanish ancestry, literate in the Spanish language but illiterate in English and hence barred from voting by New York's statute.

I doubt that literacy is a wise prerequisite for exercise of the franchise. Literacy and intelligence are not synonymous. The experience of nations¹ like India, where illiterate persons have returned to office responsible governments over and again, emphasizes that the ability to read and write is not necessary for an intelligent use of the ballot. Yet our problem as judges is not to determine what is wise or unwise. The issues of constitutional power are more confined. A State has broad powers over elections; and I cannot say that it is an unconstitutional exercise of that power to condition the use of the ballot on the ability to read and write. That is the only teaching of *Lassiter v. Northampton Election Board*, 360 U. S. 45. But we are a multi-racial and multi-linguistic nation; and there are groups in this

¹ Puerto Rico in the last quarter century has also provided a demonstration of the point, although it is fast overcoming its illiteracy problem. In 1940 31.5% of its people were illiterate. The rate was reduced to 13.8% in 1965. Selected Indices of Social and Economic Progress: Fiscal Years 1939-40, 1947-48 to 1964-65 (Puerto Rico Bureau of Economic and Social Analysis) 7-8. During this period the people have elected highly progressive and able officials.

country as versatile in Spanish, French, Japanese, and Chinese, for example, as others are in English. Many of them constitute communities in which there are widespread organs of public communication in one of those tongues—such as newspapers, magazines, radio, and television which regularly report and comment on matters of political interest and public concern. Such is the case in New York City where Spanish-language newspapers and periodicals flourish and where there are Spanish language radio broadcasts which appellant reads and listens to. Before taking up residence in New York City she lived in Puerto Rico where she regularly voted in gubernatorial, legislative, and municipal elections. And so our equal protection question is whether intelligent use of the ballot should not be as much presumed where one is versatile in the Spanish language as it is where English is the medium.

New York's law permits an English-speaking voter to qualify either by passing an English literacy test² or by presenting a certificate showing completion of the sixth grade of an approved elementary school in which English is the language of instruction.³ But a Spanish-speaking person, such as appellant, is offered no literacy test in Spanish. Her only recourse is to a certificate showing completion of the sixth grade of a public school in, or a private school accredited by, the Commonwealth of Puerto Rico;⁴ and prior to § 4 (e) of the Voting Rights Act that school had to be one in which English was the language of instruction. The heavier burden which New York has placed on the Spanish-speaking American cannot in my view be sustained under the Equal Protection Clause of the Fourteenth Amendment.

² Section 168 (1), McKinney's Consolidated Laws of New York Ann., Election Law.

³ *Id.*, § 168 (2).

⁴ *Ibid.*

We deal here with the right to vote which over and again we have called a "fundamental matter in a free and democratic society." *Reynolds v. Sims*, 377 U. S. 533, 561-562; *Harper v. Virginia Board*, 383 U. S. 663, 667. Where classifications might "invade or restrain" fundamental rights and liberties, they must be "closely scrutinized and carefully confined." *Harper v. Virginia Board*, *supra*, at 670. Our philosophy that removal of unwise laws must be left to the ballot, not to the courts, requires that recourse to the ballot not be restricted as New York has attempted. It little profits the Spanish-speaking people of New York that this literacy test can be changed by legislation either in Albany or in Washington, D. C., if they are barred from participating in the process of selecting those legislatures. That is a fundamental reason why a far sterner test is required when a law—whether state or federal—abridges a fundamental right.*

New York, as I have said, registers those who have completed six years of school in a classroom where English is the medium of instruction and those who pass an English literacy test. In my view, there is no rational basis—considering the importance of the right at stake—for denying those with equivalent qualifications except that the language is Spanish. Thus appellant has, quite apart from any federal legislation, a constitutional right to vote in New York on a parity with an English-speaking citizen—either by passing a Spanish literacy test or through a certificate showing completion of the sixth grade in a Puerto Rican school where Spanish was the classroom language. In no other way can she be placed on a constitutional parity with English-speaking electors.

* See *Thornhill v. Alabama*, 310 U. S. 88, 95-96; *Thomas v. Collins*, 323 U. S. 516, 530; *Ashton v. Kentucky*, 384 U. S. —.